

THE
REVISED STATUTES

OF THE
STATE OF INDIANA,

ADOPTED AND ENACTED BY THE GENERAL ASSEMBLY AT THEIR

TWENTY-SECOND SESSION.

TO WHICH ARE PREFIXED

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF THE U. S., THE
CONSTITUTION OF THE STATE OF INDIANA,

AND SUNDRY OTHER DOCUMENTS CONNECTED WITH THE POLITICAL HISTORY OF THE

TERRITORY AND STATE OF INDIANA.

ARRANGED, COMPILED, AND PUBLISHED BY
AUTHORITY OF THE GENERAL ASSEMBLY.

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1838.

DECLARATION OF INDEPENDENCE.

In Congress, July 4th, 1776.

UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes, which impel them to the separation. Propriety of the declaration.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments, long established, should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world. Unalienable rights of the people, &c.

He has refused his assent to laws the most wholesome and necessary for the public good.

Recitation of injuries.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operations, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it, at once, an example and fit instrument for introducing the same absolute rule into these colonies: Usurpations on the part of, the British crown.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people. Petitions for redress unavailing.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow the usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends. Appeal to the British people fruitless, &c.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of

DECLARATION OF INDEPENDENCE.

The colonies absolved from their allegiance.

Mutual pledge of fidelity.

these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW-HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton,

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Payne,
Elbridge Gerry,

RHODE-ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington.
William Williams.
Oliver Wolcott.

NEW-YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris,

NEW-JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,

George Taylor,
James Wilson,
George Ross.

DELAWARE.

Caesar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Car-

[rollton,

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee,
Carter Baxton.

NORTH-CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH-CAROLINA.

Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton,

CONSTITUTION OF THE UNITED STATES.

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative powers vested in congress.

SECTION II.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of Representatives, how composed.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualifications of members.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode-Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North-Carolina five; South-Carolina five; and Georgia three. Representatives and direct taxes, how apportioned. Enumeration every ten years. Limitation of ratio.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Writs of election.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment. Speaker.

SECTION III.

Senate, how composed.

Divided into three classes

Executives of states to make temporary appointments.

Qualifications of members.

Vice President presiding officer.

President pro tem. & other officers, how chosen.

Sole power to try impeachments.

Extent of judgment in cases of impeachment.

Elections for senators & representatives, how regulated.

Congress shall assemble annually.

Each house judge of the election of its own members.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointment until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may at any time by law, make or alter such regulations, except as to the place of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number

may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. Each house determine its own rules.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal. Journals.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Adjournment.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Compensation of members.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Members shall not hold offices, &c.

SECTION VII.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. Revenue bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays: and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not

be returned, by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Joint resolutions to receive the same sanction as bills.

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power—

Congress have power to lay taxes.

1. To lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing the militia.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers and the authority of training the militia, according to the discipline prescribed by congress:

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings:—And

17. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department or officer thereof.

Exclusive legislation in the 10 miles square, (District of Columbia.)
To make all laws necessary for carrying into execution the foregoing powers.

SECTION IX.

1. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight: but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Migration or importation of certain persons &c.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Habeas corpus.

3. No bill of attainder, or ex post facto law, shall be passed.

Ex post facto law.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Direct tax according to census.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No preference of ports.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Money how to be expended.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

No title of nobility granted.

SECTION X.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers withheld from the states.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and

Powers which the states may exercise with the consent of congress.

the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION I.

Executive power vested in a president &c.

Electors.

Congress may determine the time of choosing electors &c.

Qualifications of president.

In case of vacancy in the office of president, the vice-president to act, &c.

(*See sec. 9, chap. 109, vol. 2, U. S. laws.)

Compensation of the president \$25,000. (†See chap. 19 vol. 2, U. S. laws.)

Oath.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [Annulled—See amendments, article 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office or, of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president,* and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.†

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES.

SECTION II.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he may think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE 3.

SECTION I.

1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offi-

ces during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION II.

Its extent.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.*

(*See restrictions of this power, amendments art. 11.)

Jurisdiction.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which the state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Trial by jury.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Its punishment.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION I.

Acts of states accredited.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION II.

Citizens' privileges.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

New states may be admitted into the Union.

2. The congress shall have power to dispose of, and make Territory of all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Territory of United States.

SECTION IV.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Republican form of government guaranteed to the states.

ARTICLE 5.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislature of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Amendments, how attained.

ARTICLE 6.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against

Assumption of debts.

the United States under this constitution, as under the confederation.

Constitution, treaties, &c. supreme law of the land.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Legislators bound by oath to support this constitution.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7.

Ratification.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.

CONNECTICUT.
William Samuel Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton,

PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,

Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.
George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.
John Blair,
James Madison, jun.

NORTH CAROLINA.
William Blount,
Richard Dodds Spaight,
Hugh Williamson.

SOUTH CAROLINA.
John Rutledge,

Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest:

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE 6.

Speedy public
trial by jury.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE 9.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

Restriction of
judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.

Mode of electing
President and
Vice President.

1. The electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President

of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states, shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death, or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

ARTICLE 13.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ACT OF VIRGINIA.

AN ACT to authorize the Delegates of this State in Congress, to convey to the United States in Congress assembled, all the right of this Commonwealth to the Territory north westward of the river Ohio.

[PASSED DECEMBER 20, 1783.]

1. WHEREAS the Congress of the United States did, by their Preamble, act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several states

in the Union, having claims to waste and unappropriated lands in the Western Country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union:

2. And whereas this commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said commonwealth had to the territory north-west of the river Ohio, subject to the conditions annexed to the said act of cession:
3. And whereas the United States in Congress assembled, have, by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this State, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that Congress will, in justice to this state for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union:

Delegates empowered to convey.

Be it enacted by the General Assembly, That it shall and may be lawful for the delegates of this state to the congress of the United States, or such of them as shall be assembled in congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying, and being to the north-west of the river Ohio, subject to the terms and conditions contained in the before recited act of congress of the thirteenth day of September last, that is to say: Upon condition that the territory so ceded shall be laid out and formed into states, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed, shall be distinct republican states and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other states; that the necessary and reasonable expenses incurred by this state in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them,

Conditions.

shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning of the act of congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants and other settlers of the Kaskaskies, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then Colonel, now General George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the north-west side of the Ohio as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon Continental establishment, should, from the North-Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever. Provided, that the trust hereby reposed in the delegates of this state shall not be executed, unless three of them, at least, are present in congress.*

Reservations.

All the lands ceded to be a common fund for the members of the federal alliance and for no other use.

Three members at least to execute the trust.

* Agreeably to the above recited act, the territory therein alluded to, was, on the first day of March 1784, transferred to the United States, by deed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, then delegates in congress from the commonwealth of Virginia.—(See vol. 1, page 472, U. S. Laws.)

ACT OF VIRGINIA.

AN ACT concerning the Territory ceded by this Commonwealth to the United States.

[PASSED DECEMBER 30, 1788.]

Preamble.

1. WHEREAS the United States in congress assembled, did, on the seventh day of July, in the year of our Lord, one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been ceded to the said United States by this commonwealth, into states, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower congress to make such a division of the said territory into distinct and republican states, not more than five nor less than three in number, as the situation of that country and future circumstances might require: And the said United States in congress assembled, have, in an ordinance for the government of the territory north-west of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original states, and the people and states in the said territory, viz:

[Here the fifth article of compact of the ordinance of congress of 13th July 1787, is recited verbatim.]

And it is expedient that this commonwealth do assent to the proposed alteration so as to ratify and confirm the said article of compact between the original states, and the people and states in the said territory:

An article of the compact between the U. S. and the people and states N. W. of the Ohio, ratified by this commonwealth.

2. *Be it therefore enacted by the General Assembly*, That the afore-recited article of compact between the original states, and the people and states in the territory north-west of Ohio river, be, and the same is hereby ratified and confirmed, anything to the contrary, in the deed of cession of the said territory by this commonwealth to the United States notwithstanding.

SEVENTH section of an act of the Commonwealth of Virginia, entitled, "an act concerning the erection of the District of Kentucky into an independent state," (Passed December 18th, 1789.)

(See Revised Laws of Virginia, 1st vol. page 59.)

SEC. 7. That the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies therein, shall be free and common to the citizens of the United States; and the respective jurisdictions of this commonwealth, and of the proposed state, on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

ORDINANCE OF CONGRESS.

In Congress, July 13, 1787.

AN ORDINANCE for the government of the territory of the United States north-west of the river Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by congress, a

Secretary.

secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months to the secretary of congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

Adoption and publication of laws.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Officers of militia.

The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Appointment of magistrates &c.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Civil divisions of the district.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, the counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Right of representation; general assembly &c.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the

number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit:—As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term: And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take the Oath of fidelity and of office to be taken.

Delegates to
congress.

shall take an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

Articles of com-
pact, &c.

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made; or have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall from time to time be made, for pre-

venting wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states; within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same,* shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio; by a direct line drawn due north from the mouth of the Great Miami to the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty thousand free

(*See consent of
Virginia, page
22.)

inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully re-claimed, and conveyed to the person claiming his or her labor or service as aforesaid.

ACT OF CONGRESS.

AN ACT to provide for the government of the territory north-west of the river Ohio.

[APPROVED AUGUST 7, 1789.]

WHEREAS, in order that the ordinance of the United States in congress assembled, for the government of the territory north-west of the river Ohio, may continue to have full effect; it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information and to make such communication to the president of the United States; and the president shall nominate, and by and with the consent of the Senate, shall appoint all officers, which, by the said ordinance, were to have been appointed by the United States in Congress assembled; and all officers, so appointed, shall be commissioned by him; and in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the president is hereby declared to have the same powers of revocation and removal.

Governor to make communication to the president of the U. S. President & Senate to appoint territorial officers.

President to commission;

and remove.

SEC. 2. *And be it further enacted,* That in a case of the death, removal, resignation, or necessary absence of the governor of the said territory, the secretary thereof shall be and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor during the vacancy occasioned by the removal, resignation, or necessary absence of the said governor.

In case of death, removal, &c. the secretary to execute the power of government during the vacancy.

ACT OF CONGRESS.

AN ACT to divide the territory of the United States north-west of the Ohio into two separate governments.

[APPROVED MAY 7, 1800.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the fourth day of July next, all that part of the territory of the United States north-west of the Ohio river, which lies westward of the line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called the Indiana territory.

The Indiana territory constituted, its boundaries, &c.

SEC. 2. *And be it further enacted,* That there shall be established within the said territory a government, in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages granted and secured to the people by the said ordinance.

Government of Indiana ter., the same as that established by ordinance of 13th July, 1787, &c.

SEC. 3. *And be it further enacted,* That the officers for the said territory, who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the territory of the United States north-west of the river Ohio: And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor; *Provided,* that the president of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

Officers of the ter. to be appointed by the president and senate to perform the duties & receive the compensations, provided, &c., by ordinance and the laws, for similar officers in the N. W. Ter. &c.

Proviso.

SEC. 4. *And be it further enacted,* That so much of the

ordinance for the government of the territory of the United States north-west of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, that until there shall be five thousand free male inhabitants of twenty-one years and upwards, in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in said territory, agreeably to the number of free males, of the age of twenty-one years and upwards, which they may respectively contain.

SEC. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the territory of the United States north-west of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next: *Provided*, That whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, running thence due north to the territorial line between the United States and Canada, shall be erected into an independent state, and admitted into the union on an equal footing with the original states, thenceforth said line shall become and remain permanently the boundary line between such state and the Indiana territory; any thing in this act contained to the contrary notwithstanding.

SEC. 6. *And be it further enacted*, That until it shall be otherwise ordered by the legislatures of the said territories, respectively, Chillicothe, on the Scioto river, shall be the seat of the government of the territory of the United States north-west of the Ohio river; and that Saint Vincennes on the Wabash river, shall be the seat of government for the Indiana territory.

ACT OF CONGRESS.

AN ACT for dividing the Indiana Territory into two separate governments.

[APPROVED FEBRUARY 3, 1809.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the first day of March next, all that part of the Indiana territory which lies west of the Wabash river, and a direct line drawn from the said Wabash river and Post Vincennes due north, to the territorial line between

So much of the ordinance, &c. as relates to the organization of the gen. assembly in the N. W. Ter., &c. to operate in the Ind. ter. &c.

Proviso.

Nothing in this act to affect the gov. in force in the N. W. T. except as to the Indiana ter. &c.

Proviso.

Chillicothe the seat of gov. for the N. W. T., & St. Vincennes the seat of gov. for Indiana, &c.

Illinois territory formed.

the United States and Canada, shall, for the purpose of temporary government constitute a separate territory, and be called Illinois.

SEC. 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio, and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory north-west of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States north-west of the river Ohio, by the said ordinance.

SEC. 3. *And be it further enacted*, That the officers for the said territory who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the Senate, shall, respectively, exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory. And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: *Provided*, That the president of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of Congress.

SEC. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States north-west of the river Ohio, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Illinois territory, whenever satisfactory evidence shall be given to the governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, That until there shall be five thousand free male inhabitants of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

SEC. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the Illinois territory, from and after the aforesaid first day of March next.

SEC. 6. *And be it further enacted*, That all suits, process,

Government thereof.

Officers, how appointed.

Proviso.

Organization of a gen. assembly.

Proviso.

Government of Indiana ter. not affected.

Provision as to
suits pending.

and proceedings, which, on the first day of March next, shall be pending in the court of any county which shall be included within the said territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

Taxes to be still
collected.

SEC. 7. *And be it further enacted*, That nothing in this act contained shall be so construed as to prevent the collection of taxes which may, on the first day of March next, be due to the Indiana territory on lands lying in the said territory of Illinois.

Seat of govern-
ment.

SEC. 8. *And be it further enacted*, That, until it shall be otherwise ordered by the legislature of the said Illinois territory, Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois territory.

ACT OF CONGRESS.

AN ACT to enable the people of the Indiana Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

[APPROVED, APRIL 19, 1816.]

Inhabitants au-
thorized to form
a constitution,
&c.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever.

Boundaries of
the state.

SEC. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river, to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said river; and from thence by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio, *Provided*, That the convention hereinafter

Proviso.

provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory north-west of the river Ohio: *Provided also*, That the said state shall have concurrent jurisdiction on the river Wabash, with the state to be formed west thereof, so far as the said river shall form a common boundary to both.

Proviso.

SEC. 3. *And be it further enacted*, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory, regulating elections therein for members of the house of representatives.

Qualifications of
electors.

Apportionment.

SEC. 4. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized, to meet at the seat of the government of the said territory on the second Monday of June next; which convention when met, shall first determine, by a majority of the whole number elected, whether it be, or be not expedient at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance: and shall then form for the people of said territory, a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to those articles of

Convention,
time and place
of meeting.

Its powers and
duties.

Proviso.

the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original states and the people and states of the territory north-west of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed.

One representa-
tive in congress. SEC. 5. *And be it further enacted*, That until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

Propositions to
the convention. SEC. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

School section. *First.* That the section numbered sixteen, in every township, and when such section has been sold, granted or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

Salt springs re-
served. *Second.* That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole, the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used under such terms, conditions, and regulations as the legislature of the said state shall direct; provided the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

Five per cent.
for roads and ca-
nals. *Third.* That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

Seminary town-
ship. *Fourth.* That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature.

Seat of govern-
ment donation. *Fifth.* That four sections of land be, and the same are hereby granted to the said state, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said state, be located at any time in such township and range, as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within the said territory: *Provi-*

ded, That such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always*, That the five foregoing propositions, herein offered, are, on the conditions that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Lands sold by
the U. States to
be exempt from
taxation for five
years.

ORDINANCE.

Be it ordained by the representatives of the people of the Territory of Indiana, in convention met at Corydon, on Monday the tenth of June, in the year of our Lord eighteen hundred and sixteen, That we do, for ourselves and our posterity agree, determine, declare, and ordain, that we will and do hereby accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled "an act to enable the people of the Indiana territory to form a state government and constitution, and for the admission of such state into the Union, on an equal footing with the original states."

Propositions of
congress accept-
ed.

And we do, further for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said state of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do also, further for ourselves and our posterity, hereby agree, determine, declare and ordain, that each and every tract of land sold by the United States, lying within the said state, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the said state of Indiana, or by or under the authority of the general assembly thereof, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land: and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

Lands sold by
the U. S. ex-
empt from taxa-
tion.

This ordinance
irrevocable.

JONATHAN JENNINGS,
President of the Convention.

Attest, WILLIAM HENDRICKS, *Secretary.*
June 29, 1816.

CONSTITUTION OF INDIANA.

WE the representatives of the people of the territory of Indiana, in convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, and of the independence of the United States the fortieth, having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and the law of Congress entitled "An act to enable the people of Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the state of INDIANA.

Preamble.

ARTICLE I.

SEC. 1. That the general, great, and essential principles of liberty and free government may be recognized, and unalterably established: WE DECLARE, That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

Natural rights.

All power inherent in the people.

SEC. 2. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

Freedom of worship.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; That no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

No religious test.

SEC. 4. That elections shall be free and equal.

Trial by jury in civil as well as criminal cases.

SEC. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as

the legislature may prescribe by law, the right of trial by jury shall remain inviolate.

SEC. 6. That no power of suspending the operation of the laws shall be exercised, except by the legislature, or its authority.

SEC. 7. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor. Compensation for services and property.

SEC. 8. The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. No search unless on probable cause, oath, &c.

SEC. 9. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty. Freedom of the press and of speech.

SEC. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases. Prosecutions for the publication of papers, libels, &c.

SEC. 11. That all courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered without denial or delay. Justice without denial or delay.

SEC. 12. That no person arrested, or confined in jail, shall be treated with unnecessary rigour, or be put to answer any criminal charge but by presentment, indictment, or impeachment. No person put to answer, &c. but by presentment, indictment, or impeachment.

SEC. 13. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed; and shall not be compelled to give evidence against himself, nor shall be twice put in jeopardy for the same offence. Speedy public trial by jury.

SEC. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety may require it. Habeas corpus.

SEC. 15. Excessive bail shall not be required, excessive

finer shall not be imposed, nor cruel and unusual punishments inflicted.

SEC. 16. All penalties shall be proportioned to the nature of the offence.

SEC. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

SEC. 18. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood, nor forfeiture of estate.

SEC. 19. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances.

SEC. 20. That the people have a right to bear arms for the defence of themselves and the state; and that the military shall be kept in strict subordination to the civil power.

SEC. 21. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SEC. 22. That the legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which shall be for a longer term than good behavior.

SEC. 23. That emigration from the state shall not be prohibited.

SEC. 24. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article, is excepted out of the general powers of government, and shall forever remain inviolable.

ARTICLE 2.

The powers of the government of Indiana, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another: And no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE 3.

SEC. 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

SEC. 2. The general assembly may, within two years after their first meeting, and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years. The number of representatives shall, at the several periods of making such enumeration, be

fixed by the general assembly, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age, in each; and shall never be less than twenty-five nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six nor exceed one hundred.

SEC. 3. The representatives shall be chosen annually, by the qualified electors of each county, respectively, on the first Monday of August.

SEC. 4. No person shall be a representative, unless he shall have attained the age of twenty-one years; and shall be a citizen of the United States, and an inhabitant of this state; and shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax.

SEC. 5. The senators shall be chosen for three years, on the first Monday in August, by the qualified voters for representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; and the second class at the expiration of the second year; and of the third class at the expiration of the third; so that one-third thereof, as near as possible, may be annually chosen, forever thereafter.

SEC. 6. The number of senators shall, at the several periods of making the enumeration beforementioned, be fixed by the general assembly, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one-third, nor more than one-half of the number of representatives.

SEC. 7. No person shall be a senator unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States, and shall, next preceding the election, have resided two years in the state, the last twelve months of which, in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States, or of this state, and shall, moreover, have paid a state or county tax.

SEC. 8. The house of representatives, when assembled, shall choose a speaker, and its other officers: and the senate shall choose its officers, except the president; and each shall be judges of the qualifications and elections of its members.

- Two-thirds of each house, a quorum. and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.
- Journal. SEC. 9. Each house shall keep a journal of its proceedings, and publish them. The yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals.
- Protest. SEC. 10. Any one member of either house shall have liberty to dissent from, and protest against, any act or resolution, which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the journals.
- Rules. SEC. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.
- May expel a member. SEC. 12. When vacancies happen in either branch of the general assembly, the governor, or the person exercising the power of governor, shall issue writs of elections to fill such vacancies.
- Vacancies how filled. SEC. 13. Senators and representatives shall in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.
- Privilege. SEC. 14. Each house may punish, by imprisonment, during their session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours.
- Power to punish contempts. SEC. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, may require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.
- Doors kept open, except, &c. SEC. 16. Bills may originate in either house, but may be altered, amended, or rejected, by the other.
- Adjournment. SEC. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, two-thirds of the house where such bill may be depending, shall deem it expedient to dispense with this rule: And every bill, having passed both houses, shall be signed by the president and speaker of their respective houses.
- Bills. SEC. 18. The style of the laws of this state shall be, "*Be it enacted by the General Assembly of the state of Indiana.*"
- Style of the laws. SEC. 19. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject, as in other bills.

- SEC. 20. No person, holding any office under the authority of the president of the United States or of this state, militia officers excepted, shall be eligible to a seat in either branch of the general assembly, unless he resign his office previous to his election; nor shall any member of either branch of the general assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the general assembly: *Provided*, that nothing in this constitution shall be so construed as to prevent any member of the first session of the first general assembly from accepting any office that is created by this constitution, or the constitution of the United States, and the salaries of which are established.
- SEC. 21. No money shall be drawn from the treasury but in consequence of appropriations made by law. Money how drawn from the treasury.
- SEC. 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, at every annual session of the general assembly. Statement of receipts and expenditures, how published.
- SEC. 23. The house of representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators elected. Impeachment.
- SEC. 24. The governor, and all civil officers of the state, shall be removed from office, on impeachment for and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law. For what crimes and extent of judgment there-in.
- SEC. 25. The first session of the general assembly shall commence on the first Monday of November next; and forever after, the general assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this constitution. Sessions, when held.
- SEC. 26. No person, who hereafter may be a collector, or holder of public money, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable. Holder of public money not entitled to a seat, in either house of the general assembly.
- ARTICLE 4.
- SEC. 1. The supreme executive power of this state shall be vested in a governor, who shall be styled, the Governor of the state of Indiana. Executive power vested in a Governor.
- SEC. 2. The governor shall be chosen by the qualified electors, on the first Monday in August, at the places where they shall respectively vote for representatives. The returns How and when chosen.

of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law.

Term of office.

SEC. 3. The governor shall hold his office during three years, from and after the third day of the first session of the general assembly, next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years in any term of nine years.

Qualifications.

SEC. 4. He shall be at least thirty years of age, and shall have been a citizen of the United States ten years, and have resided in the state five years next preceding his election; unless he shall have been absent on the business of this state, or of the United States: *Provided*, that this shall not disqualify any person from the office of governor, who shall be a citizen of the United States, and shall have resided in the Indiana territory two years next preceding the adoption of this constitution.

Who shall not hold the office of governor, &c.

SEC. 5. No member of congress, or person holding any office under the United States, or this state, shall exercise the office of governor or lieutenant governor.

Compensation.

SEC. 6. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Commander in chief.

SEC. 7. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly.

Nominate, appoint, and commission officers.

SEC. 8. He shall nominate, and by and with the advice and consent of the senate, appoint and commission all officers, the appointment of which is not otherwise directed by this constitution; and all offices which may be created by the general assembly, shall be filled in such manner as may be directed by law.

Fill vacancies.

SEC. 9. Vacancies that may happen in offices, the appointment of which is vested in the governor and senate, or in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions that shall expire at the end of the next session.

Remit fines, and grant reprieves.

SEC. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

SEC. 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 12. He shall, from time to time, give to the general assembly information of the affairs of the state, and recommend to their consideration such measures as he shall deem expedient. *Make communications to the general assembly.*

SEC. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session. *Convene the Legislature.*

SEC. 14. He shall take care that the laws be faithfully executed.

SEC. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor. *Lieutenant Governor, how and when chosen.*

SEC. 16. He shall, by virtue of his office, be president of the senate, have a right, when in committee of the whole, to debate, and vote on all subjects, and when the senate are equally divided, to give the casting vote. *He shall be president of the senate.*

SEC. 17. In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached, shall return or be acquitted. *When acting governor.*

SEC. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the president of the senate pro tem. shall, in like manner, administer the government, until he shall be superseded by a governor, or lieutenant governor. The lieutenant governor, while he acts as president of the senate, shall receive for his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: And during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office, and no more. *President of senate pro tem. His compensation.*

SEC. 19. The president pro tempore of the Senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received had he been employed in the duties of his office, and no more.

Secretary of State may convene the senate, to choose a president pro tem.

SEC. 20. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore.

How chosen.

His duties.

SEC. 21. A secretary of state shall be chosen by the joint ballot of both houses of the general assembly, and be commissioned by the governor for four years, or until a new secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined him by law.

Bills to be presented to the governor, &c.

SEC. 22. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within five days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it; unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Joint resolutions to receive the same sanction as bills.

SEC. 23. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Treasurer and auditor, how chosen.

SEC. 24. There shall be elected, by joint ballot of both houses of the general assembly, a treasurer and auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices three years, and until their successors be appointed and qualified.

Sheriff and coroner, how chosen, &c.

SEC. 25. There shall be elected in each county, by the qualified electors thereof, one sheriff, and one coroner, at the times and places of holding elections for members of the general assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: *Provided*, That no person shall be eligible to the office of sheriff more than four years, in any term of six years.

SEC. 26. There shall be a seal of this state, which shall be kept by the governor and used by him officially, and shall be called the seal of the state of Indiana. *Seal of state.*

ARTICLE 5.

SEC. 1. The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may from time to time direct and establish. *Judiciary, how vested.*

SEC. 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Supreme court to consist of three judges.* *Jurisdiction.* *Provided* nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases, and cases in chancery, where the president of the circuit court may be interested or prejudiced.

SEC. 3. The circuit courts shall each consist of a president, and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner as may be prescribed by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: *Jurisdiction.* *Provided*, That nothing herein contained shall prevent the general assembly from increasing the number of circuits, and presidents, as the exigencies of the state from time to time require.

SEC. 4. The judges of the supreme court, the circuit, and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall at stated times receive for their services, a compensation which shall not be diminished during their continuance in office. *Judges, their term of office.*

SEC. 5. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts in their respective circuits, and the associate judges in their respective counties. *Conservators of the peace.*

SEC. 6. The supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law: And the circuit courts shall be held in the respective counties as may be directed by law. *Courts, where holden.*

SEC. 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly; *Judges, how appointed.*

and the associate judges of the circuit courts shall be elected by the qualified electors in the respective counties.

SEC. 8. The supreme court shall appoint its own clerk, and the clerks of the circuit court, in the several counties shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained, from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate that he is qualified to execute the duties of the office of clerk of the circuit court: *Provided*, That nothing herein contained shall prevent the circuit courts, in each county, from appointing a clerk pro tem. until a qualified clerk may be duly elected. *And provided also*, That the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed.

SEC. 9. All clerks shall be removable by impeachment, as in other cases.

SEC. 10. When any vacancies happen in any of the courts occasioned by the death, resignation, or removal from office of any judge of the supreme or circuit courts, or any of the clerks of the said courts, a successor shall be appointed in the same manner as herein before prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed.

SEC. 11. The style of all process shall be, "The state of Indiana." All prosecutions shall be carried on in the name and by the authority of the state of Indiana; and all indictments shall conclude against the peace and dignity of the same.

SEC. 12. A competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties; and shall continue in office five years, if they shall so long behave well; whose powers and duties shall from time to time, be regulated and defined by law.

ARTICLE 6.

SEC. 1. In all elections, not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the state one year immediately preceding such election, shall be entitled to vote in the county where he resides; except such as shall be enlisted in the army of the United States or their allies.

SEC. 2. All elections shall be by ballot: *Provided*, That the general assembly may, (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote *viva voce*; after which it shall remain unalterable.

SEC. 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be free from arrest, in going to, during their attendance at, and in returning home from elections.

SEC. 4. The general assembly shall have full power to ex-

clude from electing or being elected, any person convicted of any infamous crime. Persons infamous, not eligible, &c.

SEC. 5. Nothing in this article shall be so construed as to prevent citizens of the United States, who were actual residents at the time of adopting this constitution, and who, by the existing laws of this territory, are entitled to vote, or persons who have been absent from home on a visit, or necessary business, from the privilege of electors. Right of suffrage not affected by temporary absence.

ARTICLE 7.

SEC. 1. The militia of the state of Indiana shall consist of all free, able bodied male persons, negroes, mulattoes and Indians excepted, resident in the said state, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state; and shall be armed, equipped, and trained, as the general assembly may provide by law. Militia to be armed, equipped &c. according to law.

SEC. 2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty: *Provided*, such person or persons shall pay an equivalent for such exemption: which equivalent shall be collected annually by a civil officer, and be hereafter fixed by law, and shall be equal, as near as may be, to the lowest fines assessed on those privates in the militia who may neglect or refuse to perform militia duty. Persons conscientiously scrupulous exempt, by paying an equivalent.

SEC. 3. Captains and subalterns shall be elected by those persons, in their respective company districts, who are subject to perform militia duty; and the captain of each company shall appoint the non-commissioned officers to said company. Captains and subalterns, how elected.

SEC. 4. Majors shall be elected by those persons, within the bounds of their respective battalion districts, subject to perform militia duty; and colonels shall be elected by those persons, within the bounds of their respective regimental districts, subject to perform militia duty. Field officers, how elected.

SEC. 5. Brigadier Generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major generals shall be elected by the commissioned officers within the bounds of their respective divisions. General officers, how elected.

SEC. 6. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers, or light infantry, may be formed in the said state, in such manner as shall be prescribed by law: *Provided however*, that every troop or squadron of cavalry, company of artillery, riflemen, grenadiers, or light infantry, which may hereafter be formed within the said state, shall elect their own officers. Light companies how formed.

SEC. 7. The governor shall appoint the adjutant general and quarter master generals, as also his aids-de-camp. Staff of governor.

SEC. 8. Major generals shall appoint their aids-de-camp, and all other division staff officers; brigadier generals shall appoint their brigade majors, and all other brigade staff officers; and colonels shall appoint their regimental staff officers. — of general officers.

SEC. 9. All militia officers shall be commissioned by the

All militia off.

cers commis-
sioned by the
governor.

governor, and shall hold their commissions during good behav-
iour, or until they shall arrive at the age of sixty years.

Further organi-
zation to be pre-
scribed by law.

SEC. 10. The general assembly shall, by law, fix the me-
thod of dividing the militia of the said state into divisions, bri-
gades, regiments, battalions and companies, and shall also fix
the rank of all staff officers.

ARTICLE 8.

Amendments,
how attained.

SEC. 1. Every twelfth year after this constitution shall
have taken effect, at the general election held for governor,
there shall be a poll opened, in which the qualified electors of
the state, shall express, by vote, whether they are in favor of
calling a convention or not; and if there should be a majority
of all the votes given at such election, in favor of a convention,
the governor shall inform the next general assembly thereof,
whose duty it shall be, to provide by law, for the election of
the members to the convention, the number thereof, and the
time and place of their meeting: which law shall not be passed,
unless agreed to by a majority of all the members elected to
both branches of the general assembly; and which convention
when met, shall have it in their power to revise, amend, or
change the constitution. But, as the holding any part of the
human creation in slavery, or involuntary servitude, can only
originate in usurpation and tyranny, no alteration of this con-
stitution shall ever take place so as to introduce slavery or in-
voluntary servitude in this state, otherwise than for the pun-
ishment of crimes, whereof the party shall have been duly con-
victed.

No amendment
shall ever per-
mit the introduc-
tion of slavery.

ARTICLE 9.

Education.

SEC. 1. Knowledge and learning, generally diffused
through a community, being essential to the preservation of a
free government, and spreading the opportunities and advanta-
ges of education through the various parts of the country being
highly conducive to this end, it shall be the duty of the gen-
eral assembly, to provide by law for the improvement of such
lands as are, or hereafter may be granted by the United States,
to this state, for the use of schools, and to apply any funds
which may be raised from such lands, or from any other quar-
ter, to the accomplishment of the grand object for which they
are or may be intended: But no lands granted for the use of
schools or seminaries of learning, shall be sold by authority of
this state, prior to the year eighteen hundred and twenty; and
the moneys which may be raised out of the sale of any such
lands, or otherwise obtained for the purposes aforesaid, shall
be and remain a fund for the exclusive purpose of promoting
the interest of literature and the sciences, and for the support
of seminaries and public schools. The general assembly shall,
from time to time, pass such laws as shall be calculated to en-
courage intellectual, scientific, and agricultural improvement,
by allowing rewards and immunities for the promotion and im-
provement of arts, sciences, commerce, manufactures, and na-

Seminary lands
not to be sold
prior to the year
1820.

The general as-
sembly shall
pass laws for the
encouragement
of the arts and
sciences.

tural history; and to countenance and encourage the principles
of humanity, industry, and morality.

SEC. 2. It shall be the duty of the general assembly, as ^{Regular system}
soon as circumstances will permit, to provide by law, for a ge-
neral system of education ascending in a regular gradation
from township schools to a state university, wherein tuition
shall be gratis, and equally open to all.

SEC. 3. And for the promotion of such salutary end, the ^{Moneys paid by}
money which shall be paid as an equivalent by persons exempt ^{persons exempt}
from militia duty, except in times of war, shall be exclusively, ^{from military}
and in equal proportion, applied to the support of county sem- ^{duty, &c. ap-}
inaries; also all fines assessed for any breach of the penal laws, ^{plied to county}
shall be applied to said seminaries, in the counties wherein ^{seminaries.}
they shall be assessed.

SEC. 4. It shall be the duty of the general assembly, as ^{Penal code on}
soon as circumstances will permit, to form a penal code, found- ^{the principles of}
ed on the principles of reformation, and not of vindictive jus- ^{reformation.}
tice: And also to provide one or more farms, to be an asylum
for those persons who, by reason of age, infirmity, or other
misfortunes, may have a claim upon the aid and beneficence of
society, on such principles, that such persons may therein find
employment, and every reasonable comfort, and lose, by their
usefulness, the degrading sense of dependence.

SEC. 5. The general assembly, at the time they lay off a ^{Reservation of}
new county, shall cause at least ten per cent. to be reserved ^{10 per cent. &c.}
out of the proceeds of the sale of town lots, in the seat of jus- ^{in new counties}
tice of such county, for the use of a public library, for such ^{for county li-}
county, and, at the same session, they shall incorporate a li- ^{braries.}
brary company, under such rules and regulations as will best
secure its permanence, and extend its benefits.

ARTICLE 10.

SEC. 1. There shall not be established or incorporated, in ^{Banks.}
this state, any bank or banking company, or moneyed institu-
tion, for the purpose of issuing bills of credit, or bills payable
to order or bearer: *Provided*, that nothing herein contained
shall be so construed as to prevent the general assembly from
establishing a state bank, and branches, not exceeding one
branch for any three counties, to be established at such place,
within such counties, as the directors of the state bank may
select; provided there be subscribed, and paid, in specie, on
the part of individuals, a sum equal to thirty thousand dollars:
Provided also, that the bank at Vincennes, and the Farmers
and Mechanics' bank of Indiana, at Madison, shall be consi-
dered as incorporated banks, according to the true tenor of the
charters granted to said banks, by the legislature of the Indiana
territory: *Provided*, that nothing herein contained shall be so
construed as to prevent the general assembly from adopting ei-
ther of the aforesaid banks as the state bank: And in case ei-
ther of them shall be adopted as the state bank, the other may
become a branch, under the rules and regulations hereinbefore
prescribed.

ARTICLE 11.

- Oath of office.** Sec. 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authorized to administer oaths, to support the constitution of the United States, and the constitution of this state, and also an oath of office.
- Treason, how defined.** Sec. 2. Treason against this state shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.
- How proved.** Sec. 3. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.
- Oath.** Sec. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.
- Persons elected disqualified, who shall have been convicted of bribery, &c.** Sec. 5. Every person shall be disqualified from serving as governor, lieutenant governor, senator, or representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat or reward, to procure his election.
- Officers, their residence.** Sec. 6. All officers shall reside within the state; and all district, county, or town officers, within their respective districts, counties or towns, (the trustees of the town of Clarksville excepted,) and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division brigade, regiment, battalion, or company, to which they may severally belong.
- Neither slavery nor involuntary servitude.** Sec. 7. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the bounds of this state, be of any validity within the state.
- Laws when in force.** Sec. 8. No act of the general assembly shall be in force until it shall have been published in print, unless in cases of emergency.
- Commissions, how to issue.** Sec. 9. All commissions shall be in the name, and by the authority, of the state of Indiana, and sealed with the state seal, and signed by the governor, and attested by the secretary of state.
- Recorder.** Sec. 10. There shall be elected in each county, a recorder, who shall hold his office during the term of seven years, if he shall so long behave well: *Provided*, That nothing herein contained shall prevent the clerks of the circuit courts from holding the office of recorder.
- Corydon the seat of government, &c.** Sec. 11. Corydon, in Harrison county shall be the seat of government of the state of Indiana until the year eighteen hundred and twenty-five, and until removed by law.

- Sec. 12. The general assembly, when they lay off any new county, shall not reduce the old county, or counties, from which the same shall be taken, to a less content than four hundred square miles. Old counties not to be reduced below 400 square miles.
- Sec. 13. No person shall hold more than one lucrative office at the same time, except as in this constitution expressly permitted. No person shall hold more than one lucrative office.
- Sec. 14. No person shall be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county, shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. County officers, their residence,
- Sec. 15. All town and township officers shall be appointed in such manner as shall be directed by law.
- Sec. 16. The following officers of government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen, than as follows:—the governor, one thousand dollars; the secretary of state, four hundred dollars; the auditor of public accounts, four hundred dollars; the treasurer, four hundred dollars; the judges of the supreme court, eight hundred dollars each; the presidents of the circuit courts, eight hundred dollars each; and the members of the general assembly, not exceeding two dollars per day each, during their attendance on the same; and two dollars for every twenty-five miles they shall severally travel, on the most usual route in going to and returning from the general assembly; after which time, their pay shall be regulated by law. But no law, passed to increase the pay of the members of the general assembly, shall take effect until after the close of the session at which such law shall have been passed. Salaries,
- Sec. 17. In order that the boundaries of the state of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be, and forever remain the boundaries of the said state, to wit: Bounded on the east, by the meridian line which forms the western boundary of the state of Ohio; on the south, by the Ohio river, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash river, from its mouth to a point, where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said Wabash river; and from thence, by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio. Boundaries of the state.

ARTICLE 12.

- Sec. 1. That no evils or inconvenience may arise from the change of a territorial government to a permanent state government, it is declared by this constitution, that all rights, suits, actions, prosecutions, recognizances, contracts, and claims, both
- All suits, recognizances, &c., continue as if no change had taken place.

as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government.

Fines and forfeitures inure, &c.

Sec. 2. All fines, penalties, and forfeitures due and owing to the territory of Indiana, or any county therein, shall inure to the use of the state or county. All bonds executed to the governor, or any other officer, in his official capacity in the territory, shall pass over to the governor, or other officers of the state or county, and their successors in office, for the use of the state or county, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

All territorial officers continue until superseded.

Sec. 3. The governor, secretary, and judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution.

Territorial laws not inconsistent &c. remain in force.

Sec. 4. All laws and parts of laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full force and effect until they expire, or be repealed.

Governor use private seal, &c.

Sec. 5. The governor shall use his private seal until a state seal be procured.

Executive officers, reside at seat of government.

Sec. 6. The governor, secretary of state, auditor of public accounts, and treasurer, shall severally reside and keep all the public records, books, and papers, in any manner relating to their respective offices, at the seat of government: *Provided, notwithstanding*, That nothing herein contained, shall be so construed as to affect the residence of the governor for the space of six months, and until buildings suitable for his accommodation, shall be procured at the expense of the state.

Suits, &c. pending, to be carried on as if this constitution had not been adopted.

Sec. 7. All suits, pleas, complaints, and other proceedings now depending in any court of record, or justices' courts, shall be prosecuted to final judgment and execution, and all appeals, writs of error, certiorari, injunction, or other proceedings whatever, shall progress, and be carried on, in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein, in as full and complete a manner as if this constitution were not adopted. And appeals and writs of error, may be taken from the circuit court, and general court, now established in the Indiana territory, to the supreme court in such manner as shall be provided for by law.

President of the convention, to issue writs of election.

Sec. 8. The president of this convention shall issue writs of election, directed to the several sheriffs of the several counties, requiring them to cause an election to be held for governor, lieutenant governor, representative to the congress of the United States, members of the general assembly, sheriffs, and coroners, at the respective election districts in each county, on the first Monday in August next: Which election shall be conducted in the manner prescribed by the existing election laws of the Indiana territory; and the said governor, lieutenant governor, members of the general assembly, sheriffs, and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

Sec. 9. Until the first enumeration shall be made, as directed by this constitution, the county of Wayne shall be entitled to one senator, and three representatives; the county of Franklin, one senator, and three representatives; the county of Dearborn, one senator, and two representatives; the county of Switzerland, one representative; and the county of Jefferson, two representatives; the county of Clark, one senator, and three representatives; the county of Harrison, one senator, and three representatives; the counties of Washington, Orange and Jackson, one senator; and the county of Washington, two representatives; the counties of Orange and Jackson, one representative each; the county of Knox, one senator and three representatives; the county of Gibson, one senator, and two representatives; the counties of Posey, Warrick, and Perry, one senator; and each of the aforesaid counties of Posey, Warrick, and Perry, one representative.

Sec. 10. All books, records, documents, warrants, and papers, appertaining and belonging to the office of the territorial treasurer of the Indiana territory, and all moneys therein, and all papers and documents in the office of the secretary of said territory, shall be disposed of as the general assembly of this state may direct.

Sec. 11. All suits, actions, pleas, complaints, prosecutions, and causes whatsoever, and all records, books, papers, and documents, now in the general court, may be transferred to the supreme court established by this constitution; And all causes, suits, actions, pleas, complaints, and prosecutions whatsoever, now existing or pending in the circuit courts of this territory, or which may be therein at the change of government, and all records, books, papers and documents, relating to the said suits, or filed in the said courts, may be transferred over to the circuit courts established by this constitution, under such rules and regulations as the general assembly may direct.

Done in convention at Corydon, on the twenty-ninth day of June, in the year of our Lord, eighteen hundred and sixteen, and of the Independence of the United States, the fortieth.

In witness whereof we have hereunto subscribed our names,

JONATHAN JENNINGS.

President of the convention, and Delegate
from the county of Clark.

Delegates in convention from the counties of

CLARK.

Thomas Carr,
John K. Graham,
James Lemon,
James Scott.

DEARBORN.

James Dill,
Ezra Ferris,
Solomon Manwaring,

FRANKLIN.

James Brownlee,
William H. Eads,
Robert Hanna,
Enoch M'Carty,
James Noble.

GIBSON.

Alexander Devin,
Fred'k Rapp,

David Robb,
James Smith.

HARRISON.

John Boone,
Davis Floyd,
Daniel C. Lane,
Dennis Pennington,
Patrick Shields.

JEFFERSON.

Nath'l Hunt,
David H. Maxwell,
Samuel Smock.

KNOX.

John Badollet,
John Benefiel,
Jno. Johnson,
Wm. Polke,
B. Parke.

Attest,

WILLIAM HENDRICKS, *Secretary*.

PERRY.

Charles Polke,

POSEY.

Dann Lynn.

SWITZERLAND.

William Cotton.

WASHINGTON.

John De Pauw,
William Graham,
William Lowe,
Samuel Milroy,
Robert M'Intire.

WAYNE.

Patrick Baird,
Jeremiah Cox,
Hugh Cull,
Joseph Holman.

NATURALIZATION.

(See "Gordon's Digest of the Laws of the United States," page 270 &c., articles 1631 to 1648 inclusive.)

ART. 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

ART. 2. *First*: That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (a) two (b) years at least, before his admission, that it was bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject.(c)

ART. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June 1798, and the fourteenth day of April 1802, and who has continued to reside within the same.(d)

ART. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admit-

(a) Act May 26th, 1824, sec. 3,

(b) Ibid. 26th, 1824, sec. 4.

(c) Act April, 1802.

(d) Act March 26th, 1804, sec. 1.

ted to a citizen thereof, may, after he arrives at the age of twenty-one years, after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition (article 2) three years previous to his admission: But, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.(a)

ART. 5. When any alien, who shall have complied with the condition specified in article No. 2, and who shall have pursued the directions prescribed in article No. 9, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.(b)

ART. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.(c)

ART. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States; and well disposed to the good order and happiness of the same: The oath of the applicant shall, in no case, be allowed to prove his residence.(d)

ART. 8. In case the alien, applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, that no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.(e)

ART. 9. In addition to the directions aforesaid, all free white

(a) Act May 26th, 1824, sec. 1.

(b) Act March 26th, 1804, sec. 2.

(c) Act 15th April, 1802, sec. 1, con. 2.

(d) Act 15th April, 1802, sec. 1, con. 3.

(e) Ibid. con. 4.

persons, being aliens, who may arrive in the United States after the fourteenth of April, 1802, shall, in order to become citizens of the United States, make registry and obtain certificates in the following manner, to-wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birth place, age, nation, and allegiance, of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate, under his hand and seal of office, of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate, granted pursuant to this act, to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.^(a)

ART. 10. The certificate of report and registry, required as evidence of the time of arrival in the United States, according to article No. 9, and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required by article No. 2, shall be exhibited by every alien on his application to be admitted a citizen of the United States, who shall have arrived within the limits, and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States, and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid. But no certificate of citizenship or of naturalization obtained before May the twenty-sixth, 1824, from any court of record within the United States, shall be deemed invalid in consequence of any omission to comply with the requisitions of the foregoing article.^(b)

ART. 11. Nothing in the foregoing article 10, contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and

^(a) Act 14th April, 1802, sec. 2.

^(b) Act March 22nd, 1816, sec. 1.—Act May 25th, 1824.

under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to article No. 3. Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.^(a)

ART. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen without the consent of the legislature of the state in which such person was proscribed.^(b)

ART. 13. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.^(c)

^(a) Act 22nd March, 1816, sec. 2.

^(b) Campbell v. Gordon, 6 Cr. 76.—Act 14th April, 1802, sec. 4.

^(c) Campbell v. Gordon, al. 6. Cr. 4. cl. 2.

ART. 14. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.(a)

ART. 15. Every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.(b)

ART. 16. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States.(c)

ART. 17. The oath of naturalization when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the alien to become a citizen.(d) Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens have been complied with.(e)

ART. 18. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.(f)

(a) Act April 14th, 1802, sec. 1. con.

(b) Act April 14th, 1802, sec. 3.

(c) Act March 3d, 1813, sec. 12.

(d) Campbell v. Gordon, and al.
6, Cr. 176.

(e) Stark v. Chesapeake Ins. comh.

7, Cr. 520.

(f) Con. art. 4, sec. 2.

THE REVISED STATUTES OF INDIANA.

CHAPTER I.

AN ACT allowing and regulating the Writ of Ad Quod Damnum.

[APPROVED DECEMBER 20, 1823.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That if any person, owning lands on one side of a water course, and the bed thereof, either by a legal or equitable title, and desiring to erect a dam across the same, for the purpose of building a water grist mill, saw mill, carding or fulling mill, or any other machinery to be propelled by water on such lands, and erect a dam across the same, shall not own the land on the opposite side thereof, against which he would about his dam, he shall make application for a writ of *ad quod damnum* to the circuit court of the county where such lands may lie, which court shall thereupon order their clerk to issue such writ to be directed to the sheriff, commanding him to summon and empanel twelve fit persons to meet on the land so proposed for the abutment, on a certain day to be named by the court and inserted in said writ, of which day ten days previous notice to the proprietor thereof shall be given, if to be found in the county, and if not, then to his agent, if any he have in the county, or if no agent, to be advertised at the door of the court house of the proper county, for two terms.

SEC. 2. The jury so summoned and empanelled shall be charged by the sheriff, impartially, and to the best of their skill and judgment, to view the land proposed for an abutment, and to locate and circumscribe by metes and bounds one acre thereof, having due regard therein to the interests of both parties, and to appraise the same according to its true value, to examine the land above and below, the property of others, which may probably overflow, and say what damage it will be to the several proprietors, and whether the mansion house of any

Writ ad quod
damnum, in
what cases to is-
sue.

Application,
how to be made.

Jury to be sum-
moned.

Jury to view,
examine, &c.

such proprietor or proprietors, or the officers, curtilages or gardens, thereunto immediately belonging, will be overflowed, to inquire whether and in what degree fish of passage, or ordinary navigation will be obstructed, whether by any and what means, such obstruction may be prevented, and whether in their opinion, the health of the neighbors will be annoyed by the stagnation of the waters.

Inquest to be returned to the next court, &c.

Proceedings thereon.

Writ how obtained after building mill.

Proceedings thereon.

SEC. 3. The inquest so made and sealed, by the said jurors, together with the writ, shall be returned by the sheriff to the next succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the lands so located or found liable to damage, if they be to be found within the county where the lands so to be condemned or overflowed do lie; and if not, then to their agent, if any they have, to shew cause if any they have, why the party so applying should not have leave to build his said mill dam.

SEC. 4. Where any person may have built a mill or other dam, whereby the water of any river, creek, run, or spring may be rendered thereby stagnant, it may be lawful for any person interested therein, or who may be damaged by the overflowing of said water, to obtain a writ of *ad quod damnum*, in the same manner as is directed in case of persons wishing to build a new mill, and the jury so summoned shall ascertain the damage, which any individual may sustain, in consequence of the continuance of the said mill dam, and whether the said mill is of public utility, and after the jury aforesaid shall have made their return, it shall be the duty of the owner or owners of the said mill to pay to any and every individual the sum assessed by the jury aforesaid; and upon payment of said assessment, the said owner or owners shall be clear of all damages to the person interested as aforesaid, any law, usage or custom to the contrary notwithstanding.

Application where made, if lands are divided by a stream.

SEC. 5. In like manner, if the person proposing to build such mill and dam, shall own the land on both sides of the stream, application shall be made to the court aforesaid of the county where the mill house will stand, for a writ to examine as aforesaid what lands may be overflowed, and to make the same examination and report, as in the case last mentioned, which writ shall be directed, executed, and returned as prescribed in the former case.

Duty of the court, on return of the writ.

SEC. 6. If on such inquest or other evidence, it shall appear to the court, that the mansion house of any proprietor, curtilage or garden thereunto immediately belonging, will be overflowed, or the health of the neighborhood annoyed, they shall not give leave to build such mill and dam; but if none of those injuries are likely to accrue, they are then to proceed to adjudge whether all circumstances weighed, it be reasonable, that such leave be given, or not given accordingly.

Application to pay damages.

SEC. 7. And if the party applying shall obtain leave to build the said mill and dam, he shall, upon paying, respectively to the several proprietors entitled, the value of the acre so located, and the damages, which the jurors find will be by overflowing the lands above and below, become seized in fee simple

of the said acre of land; but if he shall not within one year thereafter begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or in case the said mill and dam be destroyed, if he shall not begin to rebuild it within one year after such destruction, and finish it within three years thereafter, the said acre of land shall revert to the former proprietor and his heirs, unless at the time of such destruction, the owner thereof be a feme covert, infant, imprisoned, or of unsound mind, in which case the same time shall be allowed after such disability be removed.

Begin to build within 1 year.

SEC. 8. The inquest of the said jurors nevertheless, or opinion of the court, shall not bar any prosecution or action, which any person would have had in law, had this act never been made, other than for such injuries, as were actually foreseen and estimated by the jury.

Proceedings under this writ, not to bar action for injuries not estimated.

SEC. 9. That all laws and parts of laws heretofore in force, in this state, regulating the writ of *ad quod damnum*, be and the same are hereby repealed.

CHAPTER II.

AN ACT for the incorporation of Agricultural Societies.

[APPROVED FEBRUARY 19, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter when any twenty or more citizens of any county, shall see proper to meet at their county seat in conformity to this act, it shall be lawful for them to organize themselves and become an agricultural society, with corporate and politic powers.

Twenty citizens may incorporate

SEC. 2. Public notice shall be given by advertisements signed by at least three freeholders of the county, and put up at three public places in said county, three weeks previous to said meeting, or published three weeks in a newspaper printed in the county, of the intended meeting, setting forth that the object thereof is the formation of an agricultural society under the provisions of this act.

Notice to be given.

SEC. 3. When twenty or more citizens of any county shall have so met at the county seat, it shall be lawful for them to choose by voice, a chairman and secretary for said meeting, who shall be sworn or affirmed faithfully to discharge their respective duties as chairman and secretary of such meeting, and then to proceed to take a vote whether they will not incorporate themselves under the provisions of this act, and if there be twenty present who so agree, they shall forthwith hold an election by ballot for officers, at which election the chairman and secretary shall officiate as judges.

Officers to be chosen.

Officers of the society.

SEC. 4. The officers of each society, shall be a president, and vice president, treasurer, secretary and seven directors, and such subordinate officers as the president and directors shall from time to time appoint, for the purpose of determining between competitors for prizes and awarding the same.

Treasurer to give bond.

SEC. 5. The treasurer shall give bond in such sum, and with such freehold security as the president and directors may approve, conditioned for the payment of all moneys entrusted to him, to such person or persons as may be by law entitled to the same, and for the faithful discharge of his duty as treasurer; which bond shall be recorded in the recorder's office of the county, and filed in the office of the clerk of the circuit court of the county.

Tax to be assessed.

SEC. 6. Before any election is held for officers at the first meeting, it shall be determined by voice, what shall be the tax for the first year on each member, and at every annual meeting the amount of the succeeding yearly tax shall be determined by voice; which shall never exceed five dollars, or be less than one dollar, in any year on each member.

Society when organized to be a body corporate and politic.

SEC. 7. So soon as a certificate signed by the chairman and secretary, that a meeting and election of a president, vice president, secretary, [treasurer] and seven directors, has been had in conformity to this act, is recorded in the recorder's office (whose duty it shall be to record the same for a fee of twelve and a half cents,) they and their successors, shall be in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of the agricultural society of county. And by such corporate name and style, shall be forever able and capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters, and demands of whatever kind and nature they may be, in as full and effectual a manner as any person or persons, bodies corporate and politic, may or can do.

May make by-laws and confer prizes.

SEC. 8. Said president and directors shall have power to make and alter by-laws, (a majority being necessary to form a quorum) to determine on what articles, animals, mode of husbandry, or other improvements of any kind connected with agriculture or domestic mechanism, they will confer prizes, and the amount thereof; to fix the days of exhibition; to fill vacancies in their own body, or in any office pertaining to the society between the times of holding annual elections; to provide for the admission of other members; to direct by a by-law the mode of holding future elections, of the time and place of which election there shall be at least ten days notice by advertisement in three public places in the county: *Provided*, no by-law shall be contrary to the laws of this state.

Shall fix the days of exhibitions. Fill vacancies.

Give notice of elections.

Shall have a common seal.

SEC. 9. Said president and directors shall have a common seal, with which they shall seal all their official acts, which seal they may alter and revoke at pleasure, and institute another instead thereof.

SEC. 10. Such corporation may receive donation of land or other property for the use of said society: *Provided*, that no such corporation shall hold any greater amount of real estate than the value of five hundred dollars, for any greater length of time than six months.

SEC. 11. The president or in his absence the vice president, shall preside at the meetings of the directors, and have a casting vote on all questions, and in case of absence of both of those officers, the directors at any meeting may choose a president pro tem. from their own body.

SEC. 12. No money shall be appropriated for any other purpose than the payment of prizes, that relate to agriculture and domestic manufactures, and for publications on the same subjects, and the necessary contingent expenses of the society.

SEC. 13. Nothing in this act shall be so construed as to prevent any member of any agricultural society from withdrawing therefrom, on his giving notice thereof to the treasurer, and paying up all dues.

This act to take effect and be in force from and after its passage.

AN ACT for the encouragement of Agriculture.

[APPROVED FEBRUARY 7, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be the duty of the board doing county business in each county in the state, at their next May session, and annually thereafter until an agricultural society shall be formed within the county, to cause notice to be given in such manner as in their opinion may be best calculated to give general publicity throughout the county, that there will be held at the usual place of holding courts in said county on the last Saturday of May, (or some subsequent day if they deem it advisable,) a meeting of the citizens of the county for the purpose of organizing a county agricultural society; and when said meeting shall convene, it shall be the duty of some one of the commissioners aforesaid to have a vote of the said meeting taken, to determine whether they will form an agricultural society or not; and if twenty or more of the citizens so convened shall decide in favor of forming such society, they may immediately proceed to an election of officers and a regular organization of a county agricultural society; which, upon such organization, shall possess politic and corporate powers: *Provided*, that if a smaller number of persons than twenty, favorable to said object, shall assemble and shall be of the opinion that at some other period a larger number could be convened, they shall have power to adjourn to such time as they may judge expedient, not exceeding ninety days.

SEC. 2. That when application shall be made to the board doing county business by five freeholders for the formation of an agricultural society in any township in their county, the said board shall give notice that there will be a public meeting held at such time and place in said township as shall be agreed on by said board and the freeholders applying for such meeting, for the formation of an agricultural society; which meeting and organization shall be conducted as provided for in the organization of county societies in the first section of this act; and if a society shall be organized it may become auxiliary to the county society and shall be entitled to a representative in the annual meeting of the county society; *Provided*, that if no county society shall have been previously formed, such society shall be held and considered the county society; and any society or societies subsequently formed in the county shall be auxiliary to the first formed in the county.

SEC. 3. The officers of each society shall be a president, vice president, corresponding and recording secretaries, treasurer, and one or more curators as the society may determine, for each township in the county, who shall constitute a board of managers, and shall be elected by the society at its annual meeting by ballot or otherwise, and shall hold their offices one year, and until their successors are regularly chosen.

SEC. 4. The treasurer shall be required to enter into bond in such sum and with such security as the board may require, conditioned for the faithful discharge of all the duties required of him by virtue of his office; which bond shall be recorded in the recorder's office of the county, and filed with the papers of the society by the recording secretary.

SEC. 5. At the first meeting of the society, and at each subsequent annual meeting, before going into an election for officers, the society shall determine by vote what shall be the tax or amount to be paid by each member for the ensuing year; but said tax shall never exceed five dollars nor less than fifty cents in any year on each member.

SEC. 6. So soon as a certificate signed by the chairman and secretary, that the society has elected its officers agreeably to the provisions of this act, shall be recorded in the office of the recorder of the county in which said society is located, whose duty it shall be to record the same for a fee of twelve and a half cents, they and their successors shall be in law and in fact a body politic and corporate, to have continuance forever by the name and style of the agricultural society of — county, and by such corporate name and style shall be for ever able and capable in law and equity to sue and be sued, plead and be impleaded, answer and to be answered unto, defend and be defended in all manner of suits, actions, complaints, pleas, causes, matters, and demands of whatever kind and nature they may be, in as full and effectual manner as any person or persons, bodies corporate and politic may or can do.

SEC. 7. Said board of managers shall have power to make and alter by-laws, any five of whom shall form a quorum, to

determine on what articles, animals, modes of husbandry, agricultural essays, crops, domestic manufactures, or other matters or improvements connected with agriculture, mechanic arts, or rural and domestic economy, they will confer prizes or premiums, and the amount thereof; to fix all places of exhibitions or fairs; to appoint all subordinate officers necessary to carry on their operations; to fill vacancies occurring in their own body in the recess of their annual meetings; to provide for the admission of members, and to fix the places and manner of holding elections, as also the time, giving at least ten days notice; and to enact such other by-laws and regulations, and do such other acts as may be necessary to carry into effect the object of the association; it shall also be their duty to hold a meeting at such time as they may agree upon between the first day of October and the first day of December in each year; and shall make out an annual report setting forth their number of members, the amount of money paid in their treasury; and in general the manner in which the same has been expended; also the general condition of agriculture in their county; the principal articles of produce and manufacture therein; with the quantity, quality, and value of each, as nearly as can be ascertained; the influence their society has exerted on the agriculture of their country; and the results promised thereby, with such other matters of agricultural improvement or intelligence as in their opinion may be useful to the public; they shall also appoint a delegate to attend the meeting of the state society as hereinafter provided for, who shall receive from the secretary a certificate of his appointment; which certificate shall entitle him to a seat in the state board; the report above required, together with a notice of the appointment of the delegate, shall be forwarded by the recording secretary of the county society, to the secretary of the state board.

SEC. 8. Said board of managers may have a common seal with which to seal their official acts, which they may alter or substitute by another at pleasure.

SEC. 9. Said corporation may receive donations of land or other property for the use of the society: *Provided*, they shall not hold real estate above the value of five hundred dollars for a longer period than one year unless the same be used as farms or gardens for agricultural experiments or purposes.

SEC. 10. The board doing county business in any county where there shall be an agricultural society formed under the provisions of this act may appropriate out of the funds of said county any sum not exceeding fifty dollars in any one year, in aid of such society; which sum shall be applied under the direction of the board of managers of such society.

SEC. 11. No funds of the society shall be applied to any other purpose than to those for the promotion of which such society was formed.

SEC. 12. Nothing in this act shall be so construed as to prevent any member of an agricultural society from withdrawing his membership on giving notice to the treasurer, and paying his dues.

State board of agriculture to be formed by appointment of the governor.

Duties of the state board.

Annual meeting of state board to be held at Indianapolis 2d Monday in Dec.

Repeal.

SEC. 13. There shall be formed a state board of agriculture consisting of five persons to be appointed by the governor, who shall hold their offices for five years, and until successors be duly appointed. The board when organized shall have power to fill any vacancies which may occur in their body by appointment, which shall terminate with the expiration of the term of members regularly appointed, and possesses all the corporate and politic powers granted to county societies by this act, by and under the style of the "Indiana State Board of Agriculture." It shall be the duty of the persons appointed as members of the state board to organize immediately by appointing one of their own body president, and by appointing a secretary and treasurer; they shall collect from county societies, and from all other sources to them accessible, such information as shall be calculated to promote the agricultural interests of the state; give such directions or instructions to county societies as may tend to produce system, uniformity, and efficiency of action on the part of said societies; prepare, procure, publish, and circulate such agricultural tracts or other works, and conduct such agricultural experiments as may be ordered by the legislature or by county societies, in state meeting represented; they shall also receive and record or file all papers of county societies committed to their care; make all necessary arrangements for the annual meetings of the state society; make an annual report to the legislature, embracing a statement of their own proceeding, an abstract of the reports from the several county societies, and such other information and recommendations as in their judgment would be interesting and useful to the agricultural community; and shall perform such other duties as shall be prescribed by the legislature or the state society.

SEC. 14. There shall be held annually in Indianapolis on the second Monday in December, a meeting of the state board and of the delegates from the county societies, which shall be known as the annual meeting of the state agricultural society of Indiana; the object of which shall be to devise plans of operations, means of diffusing agricultural intelligence, and to give that cause the best and most efficient impulse which may be afforded by their combined action and influence.

SEC. 15. That so much of an act entitled an act for the incorporation of agricultural societies, approved January 22, 1829, as comes within the purview of this act, to be, and the same is hereby repealed.

SEC. 16. This act to take effect and be in force from and after its publication in the Indiana Journal and Democrat.

CHAPTER III.

AN ACT authorizing Aliens and Foreigners to hold Real Estate within the state of Indiana.

[APPROVED JANUARY 14, 1818.]

Be it enacted by the General Assembly of the State of Indiana, That it shall and may be lawful for any foreigner or foreigners, alien or aliens, who are not the subject or subjects of, or in any wise owing allegiance to any prince, potentate or power, or foreign state, which is or shall be at the time of making the purchase herein permitted and allowed, at war with the United States of America, to purchase lands, tenements, and hereditaments within this state, and to have and hold the same, to them, their heirs, assigns, and legal representatives forever, as fully and to all intents and purposes as any natural born citizen may or could do: *Provided*, that such alien or aliens shall, previous to making such purchase, manifest by his, her, or their declaration, made according to the laws of the United States, his, her, or their bona fide intention of becoming a citizen of the United States: *And provided also*, that nothing herein contained, shall be so construed or taken as to contravene any law of the United States, that is now or may be hereafter in force relative to aliens and foreigners.

Aliens may purchase real estate.

Declaration of intention to become a citizen

CHAPTER IV.

AN ACT respecting Apprentices.

[APPROVED FEBRUARY 15, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person within the age of twenty-one years, who now is, or may hereafter be bound, by an indenture of his or her own free will and accord, or by and with the consent of the father, or in case of the death of the father, by and with the consent of the mother or guardian of the person so bound, which consent shall be signified by the signing and sealing of such indenture, by such parent or guardian, and not otherwise, to serve as an apprentice in any art, craft, trade, mystery, or employment, until such person so bound, shall arrive, if a female, to the age of eighteen, and if a male, to the age of twenty-one years, or for any shorter period, (as the case may be) such person so bound shall serve accordingly.

Subjects, manner and term of apprenticeship.

SEC. 2. It shall be the duty of any master or mistress, to have the indenture of apprenticeship as aforesaid, proved and acknowledged, by the father, mother, guardian, or minor as aforesaid (as the case may be) before some person authorized

indenture to be acknowledged and recorded. by law, in the county where such master or mistress resides, to take acknowledgements; and to have the same recorded in the recorder's office of said county within ninety days from and after the time of its execution. And every such indenture of apprenticeship shall contain an agreement on the part of the master or mistress to whom such minor shall be bound that he, she, or they will cause such minor to be instructed to read and write, and to be instructed in the general rules of arithmetic: *Provided*, said instruction in arithmetic shall be not less than to the double rule of three inclusive: *And provided further*, that when the apprenticeship shall be for a less time than three years, any agreement made between the parent or guardian, and the person to whom they bind their child, or ward, shall be accepted out of this act.

Apprentice to be taught reading, writing and arithmetic.

Mode of redress for misusing apprentice.

Master to be summoned and recognized.

C. court to make summary order.

Apprentice's contracts void.

Master may reclaim absconding apprentice.

J. P. may issue warrant vs. apprentice & make order, &c.

SEC. 3. If any master or mistress or any other person under the order or direction of such master or mistress, shall grossly misuse or ill-treat any apprentice, on complaint being made thereof, on oath, before any justice of the peace of the proper county, not akin to either party, (provided such justice shall deem it expedient to administer such oath,) by such apprentice, or any other person in his or her behalf, setting forth the specific act of misuse or ill-treatment complained of, such justice shall issue a summons, against such master or mistress, to appear and answer such complaint; and if such master or mistress, after being duly served with such summons shall neglect or refuse to attend and answer as aforesaid, such justice shall thereupon issue his warrant against such master or mistress, and cause him or her, to be forthwith brought before him, and shall thereupon recognize him or her, to appear before the circuit court of the proper county, at its next term, to answer such complaint; at which time the said court shall proceed in a summary way, to hear said complaint, and order a discharge of such apprentice, or a return to the service of his or her master or mistress; and in case such apprentice shall be discharged, the clerk of the circuit court aforesaid, shall give such apprentice a certificate thereof, and the decision of such court shall in all cases be final between the parties.

SEC. 4. And every contract or voluntary enlistment, hereafter entered into, by any apprentice, during the period of his or her apprenticeship, shall be and the same is hereby declared null and void.

SEC. 5. It shall and may be lawful, in case any apprentice shall desert the service of his or her master or mistress, for such master or mistress, to advertise such apprentice, in any public newspaper, offering a reward for the apprehending and bringing back the said apprentice; and in case such apprentice leaving the service of his master or mistress, shall openly run at large, it shall be the duty of any justice of the peace of the county, on application of such master or mistress, to issue a warrant, directed to a constable or other civil officer, to bring the body of such apprentice, forthwith before him; upon the production whereof, to order him or her, to return into the service of his or her master or mistress, and upon refusal of such

apprentice so to do, to commit him or her to the jail of the proper county, there to remain until he or she shall consent: *Provided however*, that such apprentice may appeal to the next circuit court, by entering into a recognizance with sufficient security, to appear and abide the decision of said court; which said court shall hear and determine the same according to the provisions of the second [third] section of this act.

Appeal from order of J. P.

SEC. 6. All time wilfully lost by any apprentice, shall be by him or her, returned day for day, to his or her master or mistress, at the expiration of his or her term of service, and all reasonable costs and charges incurred in apprehending and regaining any apprentice, shall be paid by him or her, upon the expiration of his or her apprenticeship: *Provided however*, that no apprentice shall be compelled to make any satisfaction to any master or mistress at the expiration of three years next after the end of the term for which such apprentice shall have contracted or shall be bound to serve.

Apprentice to remunerate for lost time.

SEC. 7. All recognizances taken by virtue of this act, shall be taken in the name of, and made payable to the state of Indiana, in any reasonable amount, at the discretion of the justice of the peace taking the same.

Recognizances.

SEC. 8. On the trial of any appeal, or cause removed by recognizance into the circuit court authorized by this act, the trial of the matters of fact in issue, shall at the request of either the master or mistress, (as the case may be) or of the apprentice, be submitted to a jury, who by their verdict, shall find whether such apprentice shall be discharged from such service and apprenticeship or not, and the court shall give judgment thereon accordingly.

Jury trial in C. court.

SEC. 9. That the father, mother, guardian or minor (as the case may be) shall be entitled to bring suit upon the indenture of apprenticeship aforesaid for any damages sustained on account of any breach of covenants therein contained in any court having competent jurisdiction thereof. All acts and parts of acts heretofore in force concerning apprenticeships are hereby repealed.

Suit may be brought.

CHAPTER V.

AN ACT authorizing and regulating Arbitrations.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That all persons who shall or may have any controversy or controversies, for which there is no other remedy but by personal action, or by suit in equity, and who are desirous of settling or terminating the same, may agree to submit the said controversy or controversies, to the umpirage or arbitration of any persons to be by them mutually chosen

What cases may be arbitrated.

for that purpose, and that their submission may be made a rule of any court of records within this state.

Parties to enter
into bond.

SEC. 2. When any person or persons have agreed to submit any matter or matters, in controversy between them, to umpirage or arbitration as aforesaid, and that the said submission may be made a rule of court, they shall enter into arbitration bonds, under their hands and seals, duly executed and delivered, with conditions for the faithful performance of the award or umpirage; which condition shall set forth the name or names of the umpire or arbitrators, and the matter or matters submitted to his or their determination, and shall also expressly state their agreement that the submission may be made a rule of any court of record within this state, or may be made a rule of such particular court as they may name or point out in their submission; and when the umpire or arbitrators is or are appointed, and the arbitration bonds duly executed and delivered as aforesaid, either party may appoint a time and place for the umpire or arbitrators to attend or meet, of which he shall give written notice to the opposite party, and to the umpire or arbitrators, at least ten days before the time appointed for such meeting; and when the umpire or arbitrators shall be ready to proceed to the business to which he or they shall have been appointed, the parties may proceed to exhibit their proofs, and the umpire or arbitrators shall have power to adjourn from time to time, until he is prepared to make his umpirage, or they are prepared to make their award, provided the same be made up within the time stipulated in the submission.

Time and place
of meeting.

Clerk to issue
subpœnas.

SEC. 3. The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the circuit court of that county, and shall be returnable before the umpire or arbitrators on a day certain, and any persons disobeying such process, shall be deemed guilty of contempt of the court out of which the same issued, and shall be subject to the same penalties and forfeitures, as are provided for disobeying writs of subpœna in other cases, and the costs of such witnesses shall be taxed by the umpire or arbitrators, according to the provisions contained in the law, ascertaining the fees of witnesses; which costs, together with the sum hereinafter allowed to the umpire or arbitrators, shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators, shall be under oath, unless otherwise agreed to by the parties.

Costs of witnesses,
by whom
taxed.

Award to be in
writing, and
copies delivered to
the parties.

SEC. 4. The award or final determination of the umpire or arbitrators, made agreeably to this act, shall be drawn up in writing and shall be signed by him or them, or so many of them as may agree thereunto, and a true copy of the said award or umpirage shall, within fifteen days thereafter, be delivered by the umpire or arbitrators, to each of the parties, or left at his, her, or their usual place of abode; and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission or arbitration bond, to the court named in the submission, or if no court be named in the submission, then to the

circuit court of the county in which the parties reside; the submission or award, so returned, shall be entered on record and filed by the clerk, and a rule thereupon made, that the person or persons against whom such award or umpirage is to operate, shew cause at that or the next succeeding court, why the said award or umpirage should not be made the judgment of the said court; and if the party should fail to appear, having had ten days previous notice, or appearing, should not shew in the opinion of the court, sufficient cause, the court shall then proceed to enter judgment thereupon: which judgment shall have the same force and effect and operation as judgment in other cases: *Provided always*, that before any rule of court is made thereon, the party moving for such rule, shall produce satisfactory proof of the due execution of the submission or arbitration bond, also that the party refusing or neglecting to obey the award or umpirage, hath been furnished with a true copy thereof as aforesaid; *And provided further*, that the party shewing cause why the award or umpirage should not be made the judgment of the court, shall be at liberty to produce before the court any evidence that he can, to shew that the said award or umpirage was obtained by mistake in matter of law or fact, or that the same was obtained by corrupt or other undue means, and in either case, the said award or umpirage shall be annulled and set aside at the costs of the party presenting the same.

How confirmed,
& how set aside.

SEC. 5. In all cases where an award or umpirage shall be presented to any court of record within this state, for a judgment to be entered thereon, whether the reference shall have been made by rule of court or otherwise, it shall be the duty of the court to which the same shall be presented as aforesaid, to hear any evidence of either party, whether to invalidate or support the same, and to set aside or enter judgment on the said award or umpirage as to said court may seem just.

SEC. 6. The umpire or arbitrators shall be entitled to receive each, the sum of one dollar per day for each and every day necessarily employed in performing the duties of their appointment.

Allowance to arbitrators.

SEC. 7. In all cases when the plaintiff and defendant having accounts to produce one against another, shall by themselves, attorneys, or agents, consent to a rule of court, referring the adjustment thereof to certain persons mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties, and approved of by the court, and entered upon the record or roll, shall have the same effect and be deemed and taken to be as available in law, as a verdict given by twelve men; and the party to whom any sum or sums of money are hereby awarded to be paid, shall have judgment on *scire facias* for the recovery thereof, as the case may require.

An award on
mutual accounts
to have the same
validity as a ver-
dict.

This act to take effect and be in force from and after its passage.

CHAPTER VI.

AN ACT authorizing domestic attachments, and regulating the proceedings thereon.

[APPROVED JANUARY 19, 1831.]

Attachment when and how to issue.

Form of oath.

Bond.

Jurisdiction of justice of the peace, when and how issued by justice of the peace.

Return of attachment.

How executed by constable.

Inventory of goods attached.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any person shall so abscond or conceal himself, herself or themselves, that the usual process of law cannot be served upon him, her, or them, it shall and may be lawful for any creditor or creditors, his, her, or their agent or attorney of such person or persons, who shall so abscond or conceal himself, herself, or themselves, to appear before any clerk of the circuit court, or justice of the peace, and make an oath to the facts or circumstances, in the form following, to wit: A. B. of the county aforesaid, solemnly swears, or affirms, as the case may be, that C. D. late of said county, is justly indebted to him the said A. B. in the sum of — by (here state the nature of the debt or contract) and that the said C. D. so conceals himself, herself, or themselves, that the ordinary process of law cannot be served upon him, her, or them; and upon filing such affidavit legally attested or authenticated, with any justice of the peace, or clerk of the circuit court, and also his bond, with security, in double the sum demanded, payable to the defendant, and conditioned for the due prosecution of his writ of attachment, and the payment of all damages that may be sustained by the defendant, if his proceedings thereon shall be wrongful and oppressive, the sufficiency of which bond and security shall be determined by such justice or clerk, it shall be the duty of such justice or clerk to issue a writ of domestic attachment, under his hand and seal of office, subject to such regulations and mode of proceeding, as is hereinafter prescribed.

SEC. 2. Each and every justice of the peace, before whom such affidavit and bond shall be filed, is hereby authorized and required to issue a writ of domestic attachment, under his hand and seal, directed to any constable of the proper county, commanding him to seize and take into his possession, the goods, chattels, rights, credits, moneys, and effects of the said defendant that may be found in his county, and make return of the said writ, and his proceedings thereon, within twenty days.

SEC. 3. The constable to whom the said writ of attachment is directed, shall take to his assistance one credible householder of the county, and on the discovery of any goods, chattels, rights, credits, moneys, or effects, of the defendant or defendants, named in the said writ, shall declare that he attaches the same, at the suit of the plaintiff or plaintiffs; and with the assistance of said householder, shall make an inventory of the property so attached, and the estimated value thereof, which shall be signed by the constable and the person assisting him, and returned with the writ; and such writ when served, ac-

cording to the provisions of this act, shall bind the property from the time of service.

SEC. 4. Such writ being returned executed, the justice shall advertise the issuing of the writ, the proceedings thereon, and the time and place at which he will proceed to hear and decide upon the same, which notice shall be published three weeks successively, in some newspaper printed in the county, or written notices thereof set up the same length of time, in three of the most public places in the county, one of which shall be at the court house door; and if the defendant does not appear on the day set for trial, the justice shall proceed to hear the allegations and proofs of the plaintiff, and render judgment for such sum as shall appear to be due, and award execution thereon, against the property attached, or so much thereof as may be sufficient to satisfy the debt and costs.

SEC. 5. All judgments rendered under this act, by any justice of the peace, may be taken up by appeal to the circuit court, as in other cases.

SEC. 6. Whenever the plaintiff's demand shall exceed the jurisdiction of the justice of the peace, or there shall not be sufficient goods and chattels of the defendant to satisfy his demand, and he shall wish to proceed against the lands of the defendant, he may file his affidavit and bond, as required in this act, in the office of the clerk of the county where the lands are situated; and it shall be the duty of such clerk to issue a writ of domestic attachment, under his official seal, directed to the sheriff of the county, and commanding him to attach the lands and tenements, and seize and take into his possession, the goods, chattels, rights, credits, moneys and effects of the defendant or defendants named in the writ, that may be found in his county, and make return of the writ within twenty days, together with his proceedings thereon.

SEC. 7. The sheriff to whom the writ of attachment is directed, shall proceed in the same manner to levy and return the same, as is prescribed to the constable, by the third section of this act, and such writ when so levied, shall constitute a lien upon the lands, and bind the personal property from the time of service.

SEC. 8. Whenever the writ shall be returned executed, it shall be the duty of the clerk to docket the cause for the second day of the ensuing term of the circuit court, and forthwith make out a notice of the pendency of said writ, requiring the defendant to appear and defend, or the same will be heard and determined in his absence; which notice the plaintiff shall cause to be published, four weeks successively, in some public newspaper published in the county, or if there be no paper published in the county, he shall cause the same to be published in the paper nearest thereto: *Provided*, That if there be no lands attached, and there be no paper published in the county, it shall be sufficient to publish the same by setting up written notices in three of the most public places in the county, one of which shall be at the court house door.

SEC. 9. At the ensuing term of the court, if the defendant does not appear, upon proof that publication has been made at

Notice of pendency of suit, how given by J. P.

Justice to render judgment.

Appeal from justice's judgment.

Lands, how attached.

When clerk shall issue writ.

Duty of sheriff.

Lien from time of levy.

Suit docketed by clerk.

Notice of pendency in circuit court.

Proviso.

Judgment when to be given in.

least ten days before the first day of the term, the court shall proceed to hear and determine upon the claim of the plaintiff, and render judgment for the amount that appears to be due, and award execution thereon, against the property attached; but if publication has not been made as required by the foregoing section, the cause shall stand continued until the next term.

Continuance.

Proceedings where S. bail is entered.

Jury trial.

Claim of goods attached, how tried.

Costs on claim of property, how taxed.

Appeal from trial of right of property.

Bond in case of appeal.

Suit on forfeited bond.

Garnishee when and how summoned.

Requisites of notice to garnishee.

Sec. 10. In all cases arising under this act, where the defendant shall appear and enter special bail, as in other cases, on the day of trial, he shall have the same privilege of pleading and making his defence, as if such suit had been commenced by summons or capias, and when the sum in controversy shall exceed twenty dollars, such trial may be by jury as in other cases.

Sec. 11. In all cases where any person or persons other than the defendant, may claim any personal property attached under the provisions of this act, the officer attaching the same, shall previous to any further proceeding on such writ, cause the right of such property to be tried as in cases of property taken in execution, and the officer shall give such claimant reasonable time to procure testimony to substantiate his said claim: and if the right of property shall be found in such claimant, the officer shall forthwith release from his custody such property, and the plaintiff shall pay the costs of such trial; but if the right of property be found in the defendant or defendants in such writ of attachment, the claimant shall pay the costs, and it shall be the duty of the justice who issued the attachment, or of the circuit court before which the writ is returnable, to tax the same: *Provided*, that in all cases, the party thinking himself, herself, or themselves aggrieved, shall have the right of appeal from the verdict of such jury; subject, however, when such appeal shall be taken from a justice, to the law regulating appeals from proceedings of justices of the peace; and in all cases where an appeal shall be taken from the verdict of such jury, the person or persons claiming such property and in whose possession it may be, shall be at liberty, upon giving bond and sufficient security, in a reasonable sum, to be approved of by the officer serving such attachment, to hold such property until such appeal shall be determined; and on failure to deliver such property agreeably to the true intent and meaning of such bond, the said bond may be put in suit by the plaintiff in attachment, who shall recover thereon all damages by him sustained.

Sec. 12. Whenever any creditor, or his agent or attorney, in his or her behalf, shall make and file his affidavit with the justice or clerk issuing such attachment, that he has good reason to believe, that any person, naming such person, has property of any description in his, her, or their possession, belonging to the attachment defendant; or that he, she, or they, are indebted to the defendant, by bond, bill, note, account or other contract, and the officer cannot come at the property of the defendant in their possession, it shall be the duty of the clerk or justice, to issue his summons to such person as garnishee, notifying him to appear within five days, if issued by a justice of the peace, or at the ensuing term, if issued by a clerk of the circuit court, there to answer under oath or affirmation, all ques-

tions that shall be put to him, her, or them, touching the rights, property or credits, of the defendant or defendants, in his, her, or their hands, or within his, her, or their knowledge; which summons with a copy of the original writ of attachment, and the affidavit against the said garnishee, shall be served, by leaving them with him or them, or at their usual place of residence. And from the day of such service, such garnishee shall stand and be accountable to the plaintiff or plaintiffs in attachment, for the amount of the money, property or credits, in his, her, or their hands, or due and owing from him, her or them, to the defendant or defendants in attachment.

Garnishee's responsibility to plaintiff.

Sec. 13. The suit instituted against such garnishee, shall be continued without any further proceedings therein, until the action against the defendant in attachment, be determined; and if on the trial of such action, nothing shall be found due from the defendant to the plaintiff, the garnishee shall recover costs of the plaintiff; and if in such suit against the garnishee, the plaintiff shall be non-suited, the cause discontinued, or judgment rendered against him, her or them, the garnishee shall recover costs. And if the plaintiff shall recover judgment against the defendant in attachment, and the garnishee shall deliver up to the sheriff or constable, before judgment had against him, her or them, or shall produce an inventory of all the goods and chattels, or other effects in his, her or their possession, and shall pay to such officer, all moneys due from him, her or them to the said defendant, then the costs which shall have accrued on such suit against the garnishee, shall be paid out of the proceeds of the property attached, and belonging to the defendant: but if he shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and on trial the plaintiff shall recover judgment against him, or if he admits that he has moneys, credits or effects, belonging to the defendant in his hands, and shall fail or refuse to pay or deliver the same to the officer, such garnishee shall pay costs; *Provided however*, that no garnishee shall in any case be compelled to pay money, or to perform any contract, to or for any plaintiff in attachment, in any other way or manner, or at any other time, than he would be lawfully bound to do for the defendant in attachment.

Continuance of suit vs. garnishee.

Costs when in favor of garnishee.

Costs when to be paid out of property attached.

Costs when to be paid by garnishee.

Proviso.

Sec. 14. If any plaintiff or plaintiffs, his, her or their agent or attorney, will make oath or affirmation, before the clerk or justice issuing this writ, that he, she or they, is or are afraid that said garnishee will abscond before judgment can be had, and that he, she or they, verily believe that such garnishee hath moneys, goods, chattels or effects of the said defendant, in his possession, or is indebted to the said defendant, it shall be lawful for the clerk or justice, to issue a capias against the said garnishee, and hold him to bail thereon, as in other civil cases.

When garnishee may be held to bail.

Sec. 15. Each and every creditor of the defendant, upon making and filing his affidavit and bond, as is required by the first section of this act, shall at any time before the final adjustment of the suit, be permitted to file and prove his, her or their claim or demand, against the defendant or defendants.

Claim filed, how and when proved.

Final judgment
vs. def't or gar-
nishee.

SEC. 16. Upon the trial of the suit in attachment, if the plaintiff or plaintiffs, creditor or creditors, shall make sufficient proof of the debts due him, her or them, from such defendant, and also of the goods, chattels, rights, credits, moneys and effects, in the possession of the garnishee, the court or justice shall proceed to give judgment thereon, in favor of the plaintiff or creditors, either against the garnishee, or the effects of the defendant, as the case may require.

When J. P. may
certify suit to
circuit court.

SEC. 17. If upon the trial before a justice of the peace, the sum proven by any one creditor shall exceed the justice's jurisdiction, such justice shall forthwith certify his proceedings, and transmit the same with all the papers filed before him, and belonging to the cause, to the clerk of the circuit court of the proper county, who shall file the same and docket the cause for trial at the next term, and the court shall proceed therein, in the same manner, as if the writ had originally issued from said court.

Accounts how
adjusted & paid.

SEC. 18. Whenever this writ shall be returned, it shall be the duty of the court or justice, to examine into, and adjust all accounts and demands of the plaintiff or creditors of the defendant, upon due proof to the court; and upon the sale of the property, the officer shall, under the direction of the court, after paying all costs and charges, pay to the several creditors, the amount of their several claims as adjusted, and if there is not a sufficiency to pay the whole sums due, it shall be the duty of the court or justice, to direct the payment of the several creditors, in proportion to their several demands. And in all cases arising under this act, the usual fees and allowances shall be made; and in all cases where moneys and effects cannot be found sufficient to satisfy the legal costs of the proceeding, then the costs shall be paid by the plaintiff and creditors in proportion to their several demands adjusted as aforesaid.

Fees, &c. how
paid.

SEC. 19. The plaintiff in any writ of attachment, shall not be permitted to discontinue the same, after any other creditor has regularly filed his claim and bond, before the court or justice issuing the writ, without the consent of, or satisfaction being made to such creditor.

Plaintiff may
not discontinue.

SEC. 20. Stay of execution on judgments rendered under the provisions of this act, shall be subject to the same law as is provided in other cases.

Stay of execu-
tion.

SEC. 21. When goods shall be attached in the hands of a consignee, such consignee shall have a lien on such goods for any debt due to him or her from the consignor, in preference to any plaintiff or creditor.

Lien of consign-
ee.

SEC. 22. All writs of attachment issued by the circuit court shall supercede proceedings under attachments issued by a justice of the peace, undetermined at the time of serving such writ; and the officer serving the writ issued by the circuit court, may take into his possession any property of the same defendant, attached by a constable under a writ from a justice of the peace; and upon his taking such property into his possession, it shall be his duty to serve the justice with a copy of the writ issued by the court; and the justice shall thereupon

Attachments
from circuit
court supercede
justice's.

Justices duty
when superse-
ded.

transmit to the clerk of the said court, a certified copy of his proceedings, and the original papers filed before him appertaining to the cause, and the circuit court shall proceed to the final adjustment of the several claims filed before the justice, in the same manner as if they had been originally filed in said court, and tax up the legal costs that accrued before said justice, which shall be paid as the other costs are paid, and the constable shall be released from all liability when property is taken from his possession, by virtue of a writ of attachment from the circuit court.

Circuit court to
render judgment
Constable not li-
able in a super-
seded case.

SEC. 23. No writ of attachment shall issue against any person or persons, by virtue of this act, while the family of such person shall be and remain, bona fide, settled within such county, if such absconding debtor or debtors shall not continue absent more than one year after the time that he, she, or they, may have abandoned his, her or their family as aforesaid; unless an attempt be made to conceal such person's absence from his, her, or their creditors, or unless such person shall be secretly removing to evade the payment of his, her, or their debt or debts.

Attachment pro-
hibited where
def't is bona fide
settled, &c.
Exceptions.

SEC. 24. If any person shall be about to abscond, to the injury of his creditor on the Sabbath day, on oath being made thereof by such creditor, it shall be lawful for the clerk of the circuit court, or any justice of the peace of the proper county, to issue a writ of attachment on said day, under the same restrictions and regulations as are prescribed in the first section of this act; and the sheriff or constable, shall proceed on said Sabbath day, to attach the goods and chattels of the defendant, as in other cases provided for.

Attachm't may
issue on the Sab.

SEC. 25. Each and every person who may think himself, herself, or themselves aggrieved by the issuing of a writ of attachment, under the provisions of this act, shall be entitled to an action on the bond filed as aforesaid; and if on the trial, it shall appear to the satisfaction of the jury, that such proceedings had against the defendant or defendants were wrongful and oppressive, then the person aggrieved shall recover damages at the discretion of the jury.

Suit, where writ
is wrongfully is-
sued.

SEC. 26. In all cases where a writ of attachment may be depending, in a circuit court, and the defendant may be desirous in the vacation thereof, to have his property released, the sheriff or other officer, having the same in possession, shall deliver to him the property upon his entering into a recognizance of special bail, with security to the satisfaction of the clerk, which recognizance shall be taken and acknowledged before the clerk and endorsed on the writ, and the said clerk shall be held responsible for the sufficiency of the security.

Special bail may
be given in va-
cation.

SEC. 27. In all suits in the name of and for the use of the state of Indiana, or in the name of any person or persons as trustee of the state, and for the use of the state, if the process issued shall be returned that any defendant in such process is not found, it shall be the duty of the attorney prosecuting any such suit, if he shall deem it advisable so to do, to have a writ of domestic attachment issued against the goods, chattels,

State may have
attachment
without oath or
bond.

lands and tenements, rights, credits, and effects of such absent defendant, to answer said demand, without making any affidavit or giving and filing any bond, and such writ of attachment when so issued shall be served and prosecuted to final judgment, according to the provisions of this act.

AN ACT to amend the act entitled "an act authorizing domestic attachments and regulating proceedings thereon," approved January 19th, 1831.

[APPROVED JANUARY 8, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That when the estate, property, or interest to be attached, exists, or is situate in different counties, or where the debtors or bailees of such absconding debtor reside in the different counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs of attachment and process against garnishees may be issued and executed in such counties. But no judgment shall be given against the estate, property or interest of the absconding debtor, or against such garnishees, unless the writ of attachment shall have been executed on some property, either real or personal, belonging to the absconding debtor, situate in the county where the suit was commenced, or unless process shall have been served upon some garnishee therein residing, or found by the officer executing the same.

No judgment given unless the writ be executed in the co. where suit was com.

AN ACT to amend the several laws relative to Domestic and Foreign Attachment.

[APPROVED FEBRUARY 6, 1836.]

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any garnishee in any proceeding in domestic or foreign attachment, fails to plead, answer or demur to the matters set forth against him in the affidavit, or any additional bill or statement or interrogatories or otherwise, to appear and make discovery as required by law, such matters may be taken for confessed, or judgment by default or *nil dicit*, as the case may require; and an inquiry may be awarded when necessary; and all further proceedings necessary to final judgment, may be had therein; or the court may compel such garnishee to answer as aforesaid; and in either case, such pleading or process shall be had thereon, according to the practice in law or equity, as the case may require, before the court or justice, when [where] the same may be pending: *Provided*, that no other or more special pleading shall be necessary in any proceeding in attachment, before a justice of the peace, than is now required.

Where garnishee fails to plead, &c. matters shall be taken as confessed, &c.

The court may make and enforce interlocutory or final orders, &c.

Sec. 2. That in all proceedings in domestic or foreign attachment, the court or justice may make, enforce and cause any interlocutory or final orders and judgments therein to be

executed as effectually as in other proceeding in law or equity as the case may require.

Sec. 3. That whenever the defendant shall give special bail to answer the demand of the plaintiff, in any writ of attachment, the same shall not be thereby discharged, nor shall the property, rights, credits, money or effects of the defendant, in any way taken, seized or attached, whether in the possession of the officer or of a garnishee, be released, if any other creditor shall have regularly filed his claim and bond before the court or justice, unless the defendant shall also give special bail to answer any other demand, so claimed against him as aforesaid.

Writ shall not be discharged nor property released on entering special bail, if there be filed &c. the claim of another creditor, unless, &c.

Sec. 4. That trustees may have the benefit of the writ in domestic and foreign attachment; and the probate courts shall have concurrent jurisdiction in attachments, where executors, administrators or guardians are plaintiffs.

Trustees may have benefit of the writ. Jurisdiction of probate court in.

AN ACT amendatory of the several acts regulating foreign and domestic writs of attachments.

[APPROVED FEBRUARY 4, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several circuit courts throughout the state of Indiana, be, and they are hereby authorized to issue alias writs of foreign and domestic attachments to any county in the state, subject to like rules and regulations prescribed by the two several acts regulating foreign and domestic attachments, the one approved January 19, and the other January 20, 1831.

Alias writs may issue.

Sec. 2. That justices of the peace are hereby authorized to issue alias writs of foreign and domestic attachments, to any township in the county in which such justice may reside, subject to like rules and regulations prescribed by the several acts regulating proceedings by attachment before justices of the peace.

Justices may issue.

CHAPTER VII.

AN ACT relative to Foreign Attachments.

[APPROVED JANUARY 20, 1831.]

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the lands, tenements, hereditaments, goods, chattels, rights, credits, moneys, and effects of any and all persons, not residents in this state, are and shall be liable for the payment of debts or other demands by suit, to be instituted by process of foreign attachment, to be issued from the circuit court having jurisdiction of the subject matter: and where the estate, property, or interest to be attached, exists or is situate

Non-resident's property liable to attachment.

Jurisdiction of the court. in different counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs may be issued and executed in such counties; and the joint and several estates, property, and interest of joint owners, either as partners or otherwise, shall be liable as aforesaid, by suit against all or any of them who may be indebted, by their proper names, or the names by which they may be known and reputed, or by the partnership name or style; and the estates, property and interest, which may have descended to non-resident heirs or devisees, or become vested in the non-resident executor or administrator of decedents, shall be liable in like manner, for debts or other demands against such decedent's estates: *Provided however*, that the property, estate, or interest of any one or more joint owners, who shall not be indebted, shall not be affected by the proceedings authorized by this act, against joint owners who may be indebted.

Property of joint owners.

Of non-resident heirs, &c.

Proviso.

Statement of demand. SEC. 2. Before any writ of attachment shall issue by virtue of this act, the nature of the debt or demand certain, and the sum claimed, shall be proved by oath or affirmation, to be justly due and owing, and that the defendant, whether the original debtor, or whether sued in a representative capacity, is not, as the person making the oath or affirmation verily believes, at the time, a resident of this state; and bond shall be given as in cases of domestic attachment, with security to be approved of by the clerk of the court issuing the writ; and said oath or affirmation, and bond, shall be filed in the office of such clerk.

Oath.

Bond.

Officer to proceed as in domestic attachment. SEC. 3. The officer serving such writ, shall proceed in the same manner, and be subject to the same responsibilities, as are prescribed in cases of domestic attachment.

Return of writ, and notice of pendency of suit. SEC. 4. Immediately after the return of the writ executed, the clerk shall make out a notice of the pendency of the writ, which notice the plaintiff shall cause to be published for three weeks successively, in a newspaper published in the county, in which such suit is depending, or the most convenient thereto, if no newspaper be there published; and the suit shall be continued for two successive terms, after publication be made and proved, before the court shall proceed to adjudicate thereon, and their proceedings in such adjudication, to final judgment, shall then be similar, in all respects, to the proceedings in domestic attachment, except where otherwise herein directed: *Provided however*, that if the defendant shall at any time appear and enter into a recognizance of special bail with the clerk, or during the term of the court, as is directed in cases of domestic attachment, the property attached may be released, and the cause proceed to issue, trial and judgment, according to the practice of the court in common law cases.

Continuance two terms.

Proceedings.

Special bail.

C. may order sale of chattels. SEC. 5. The court may direct the sale of personal chattels of a perishable nature, which may be siezed under this act, to be made by the sheriff at public auction, upon reasonable notice, and the money arising from such sale, shall be deposited with the clerk, subject to the order of the court upon final judgment. In all cases where any property is attached, that is liable to immediate damage, it shall be lawful for the officer at-

Notice of sale &c.

Sales without order.

taching the same, to make sale of such property by giving ten days notice.

SEC. 6. Creditors, other than the plaintiff, shall be permitted to file and prove their claims, by filing the affidavit and bond, as required in the second section of this act; but no creditor or plaintiff, who may have prosecuted a claim under the provisions of this act, and obtains judgment therefor in the absence of the defendant, shall receive the amount of such judgment, or any share thereof, until he first give bond, with security, to be approved of by the court or clerk, in double the value to be received, payable to the defendant, conditioned that the creditor receiving the same, shall appear and answer to any suit which such defendant may bring against him, within twelve months thence next ensuing, and to pay to such defendant, all sums of money, which on trial to be had thereon, shall appear to have been received by such creditor, and which was not justly due and owing to such creditor, together with all interest and costs of suit.

Other creditors may file claims.

Creditor to give bond.

SEC. 7. It shall be lawful for any plaintiff in foreign attachment, to summon as garnishee, any person who may have any goods, chattels, moneys, rights, credits, or effects, in his hands, belonging to such absent defendant, or to the estate on account of which he is sued; or to summon any person who may be indebted in any manner whatsoever, to such absent defendant, or to the estate on account of which he is sued, in the same manner, and subject to the same rules and restrictions, as are prescribed in proceedings by domestic attachment, and the parties and the court, shall be governed by the like rules in all respects, where the same are not repugnant to this act.

Garnishee may be summoned as in case of domestic attachment.

AN ACT to amend an act entitled "an act relative to foreign attachments," approved January 20th, 1831.

[APPROVED FEBRUARY 4, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That justices of the peace shall have concurrent jurisdiction with the circuit courts in all cases of foreign attachment, where no real property shall be attached, and where the plaintiff's demand shall not exceed the sum of one hundred dollars.

Jurisdiction of justices of the peace.

SEC. 2. That in all such cases instituted before justices of the peace, under the provisions of this act, the powers, authority, incidents, and duties appertaining and belonging to clerks and circuit courts, by the provisions of the act to which this is an amendment, shall appertain and belong to such justices of the peace; and the powers, authority, incidents, and duties appertaining to sheriffs and coroners, by the provisions of the above cited act, shall appertain to the constable, whose duty it may be to serve civil process in other cases issued by such justices of the peace, subject to the provisions of this act.

Powers, &c. of justices of the peace, &c.

SEC. 3. All cases of foreign attachment before justices of the peace shall be governed by and subject to the provisions prescribed for such cases in circuit courts in the above cited act.

Proceedings before justices same as in circuit courts.

so far as the same are applicable, and are not repugnant to the provisions of this act.

Continuance, after publication.

SEC. 4. After publication made and provided as required in the fourth section of the above cited act, each cause of foreign attachment shall, before the justice shall proceed to final adjudication, be continued for not less than six months nor more than seven months.

On appearance, &c. of defendant justice shall notify plaintiff, &c. and proceed to try said cause as in other cases.

SEC. 5. On the appearance and application of the defendant or defendants, at any time before the final judgment, the justice shall cause the plaintiff or plaintiffs, claimant or claimants, his or their agent or attorney, if to be found within the county, to have at least three days' notice of the day of trial, on which day, unless good cause of continuance be shown, as provided in other cases before justices of the peace, such justice shall proceed to try said cause and to render judgment as in other civil cases before him.

Property to be delivered to def. on his executing bond to re-deliver if judgment should go against him.

SEC. 6. If such defendant or defendants, or any other person shall, at any time before final judgment enter into bond with good security to be approved of by the justice, payable to the state of Indiana, in double the amount of the claims filed, conditioned for delivering in execution the property attached in as good plight as when attached, should judgment be rendered against him or them, then such property shall be re-delivered to the defendant or defendants, or other person as the case may be: *Provided*, that if sufficient security is offered in such bond it shall not be necessary for the defendant or defendants to execute it also: *And provided also*, that after such property may have been delivered to such other person as aforesaid, or defendant or defendants, his, her, or their agent entering into such bond as aforesaid, which shall be subject to the aforesaid provisions, and conditioned as aforesaid, then the officer attaching such property shall re-deliver said property to such defendant or defendants, his, her, or their agent, and in the last mentioned case, the bond before entered into, on the part of such other person, shall be void.

Proviso.

Proviso.

Appeal.

SEC. 7. An appeal shall lie from any judgment rendered by a justice under this act, in the time and manner provided in other cases. The appeal bond shall be payable to the state of Indiana.

Where the claim exceeds 100 dollars or real property is to be attached justices shall file trans. with the clerk of cir. ct. &c.

SEC. 8. Whenever any claim filed shall exceed the sum of one hundred dollars, or whenever the plaintiff may wish to attach real property of the defendant or defendants, the justice shall file a transcript of his proceedings with the clerk of the circuit court of his county, and the same proceedings shall be thereupon had as if the cause had been originally commenced in such court, and further proceedings thereon before said justice shall be stayed, and any property which may have been attached by any constable in the cause shall be delivered on the writ of attachment issued by the clerk of the circuit court.

Suit on bond by whom brought.

SEC. 9. Suit may be brought on any bond mentioned in the sixth and seventh sections of this act, in the name of the state of Indiana, for the use of any person or persons entitled to any demand or claim filed or sued for, in the cause in which such

bond was filed: *Provided*, that a separate suit may be instituted on such bond for every separate claim or demand filed as aforesaid, for the use of the person or persons entitled to the same.

CHAPTER VIII.

AN ACT regulating the admission and practice of Attorneys and Counsellors at Law.

[APPROVED JANUARY 31, 1825.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That no person shall be permitted to practise as an attorney and counsellor at law, or to commence, conduct, or defend any action, suit, or plaint, in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose, from any two of the judges of the supreme court, or from two circuit judges, agreeably to the laws of this state; which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record in this state, if the license be given by the said judges of the supreme court, and in all the circuit and inferior courts of record in this state, if the license be given by the circuit judges of this state; and to appear and practice as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behaviour in the said practice, and to demand and receive all such fees as are or may hereafter be established, for any service which he shall or may do, as an attorney and counsellor at law.

SEC. 2. No person shall be entitled to receive a license as aforesaid, until he hath obtained a certificate from the court of some county of his good moral character.

SEC. 3. It shall be the duty of the clerk of the supreme court, to make and keep a roll or record on good paper, standing at the head or commencement thereof, that the persons, whose names are thereon written, have been regularly licensed and admitted to practise as attorneys and counsellors at law within this state, and that they have duly taken the oath to support the constitution of the United States, and such other oaths, as may be and are required by law, which shall be certified and endorsed on the said license.

SEC. 4. And no person whose name is not subscribed or written on the said roll, with the day and year, when the same was subscribed thereto or written thereon, shall be suffered or admitted to practise, as an attorney or counsellor at law, under the penalty hereinafter mentioned, any thing in this law to the

contrary notwithstanding: and the judges of the supreme court, in open court, shall have power to strike the name of any attorney or counsellor at law from the rolls for mal-conduct in his office: *Provided always*, that every attorney before his name is struck off the roll, shall receive a written notice, from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall, after such notice be heard in his defence, be allowed reasonable time to collect and prepare testimony for his justification: and every attorney, whose name shall, at any time, be struck off the rolls by order of the court, in manner aforesaid, shall be considered as though his name had never been written thereon, until such time, as the said judges, in open court, shall authorize him again to subscribe the same.

Judges may punish attorneys for contempt.

SEC. 5. The judges of the supreme court, and the judges of the several circuit courts, shall have power to punish in a summary way, according to the rules of law and the usages of courts, any and every attorney and counsellor at law, who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law receiving money for the use of his client, and refusing to pay the same over when demanded, may be proceeded against in a summary way, by motion; and all attorneys and counsellors at law, judges, clerks, and sheriffs, and all other officers of the several courts, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against, in the same manner, as other persons are, except in such cases, and at such times, as they may be privileged by statute from arrest.

Judges may not practise, &c.

SEC. 6. No person shall be permitted to prosecute as an attorney or counsellor at law, by instituting, defending, or conducting any action, plaint, suit, or plea, in any court whatever, who holds a commission as a judge of the supreme or circuit courts, or any person, who holds a commission of sheriff or coroner, or who acts as a deputy sheriff, jailor or constable, be permitted to practise as an attorney or counsellor at law, in the county in which he has been commissioned or appointed; nor shall any clerk of the supreme or circuit courts, be permitted to practise as attorneys or counsellors at law in the court of which he is clerk; and no person shall be permitted or suffered to enter his name upon the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or to do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States, and the constitution of this state, an oath of office, and such other oaths as may be required by the laws of the state; and the person administering such oath, shall certify the same on the back of the license, which certificate shall be a sufficient voucher to the clerk of the supreme court, to enter or insert, or permit to be entered or inserted, on the roll of attorneys and counsellors at law, the name of the person, of whom such certificate is made,

Attorney, take oath.

SEC. 7. The following oath of office shall be administered to every attorney and counsellor at law, before they subscribe the respective rolls, to wit: I swear or affirm, that I will, in all things faithfully execute the duties of an attorney at law, or duties of counsellor at law, as the case may be according to the best of my understanding and abilities.

SEC. 8. Any person producing a license, or other satisfactory voucher, proving that he has been regularly admitted an attorney at law, in any court of record within the United States, and that he is of good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law; and any attorney and counsellor at law residing in any of the United States, who is of good moral character, may, at any time, on application, be admitted to an examination for the degree of an attorney and counsellor at law, within this state.

Attorneys from other states admitted on examination.

SEC. 9. If any person or persons, not licensed as aforesaid, shall receive any money or other species of property, as a fee or compensation for services rendered or to be rendered by him or them, as attorney or attorneys, counsellor or counsellors at law, all moneys, so received, may be recovered back, with costs of suit, by an action or actions, for money had and received, and property delivered or conveyed for the purpose aforesaid, or the value thereof may be recovered back, with costs of suit, by the person delivering or conveying the same, by an action of detinue or trover and conversion; and the person or persons receiving such money or property, shall forfeit three-fold the amount or value thereof, to be recovered with costs of suit, before any magistrate, if within a magistrate's jurisdiction; but if not, before any court of record by action of debt or quitclaim, the one-half to the use of the person who may sue for the same, and the other half to the use of the county in which such suit shall be brought; and if any person or persons shall sign, or cause to be assigned, the name of an attorney, or either of the judges of the supreme court, to any certificate or license provided for by this act, with intent to deceive, such person or persons shall be deemed guilty of forgery, and may be prosecuted and punished accordingly.

Fees, how recovered back.

Forfeiture.

SEC. 10. Plaintiffs shall have the privileges of prosecuting, and defendants the privilege of defending in their proper persons; and nothing herein contained shall be so construed as to debar them therefrom; nor shall any thing herein contained be so construed, as to affect any person or persons, heretofore admitted to the degree of an attorney and counsellor at law, according to the rules of the former general court, so as to subject them to a further examination, or cause them to renew their license.

Suitors may appear in court without att's.

AN ACT supplemental to the act, entitled an act regulating the admission and practice of Attorneys and Counsellors at Law; approved January 31, 1824.

[APPROVED DECEMBER 28, 1827.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all cases where any attorney or counsellor at law shall have heretofore collected, or shall hereafter collect for his employer any money, and shall neglect or refuse to pay the same over, on being requested so to do, by any person authorized to receive the same, it shall and may be lawful for such person, his agent, or attorney, to file in the clerk's office of the circuit court where such collection was made, charges against such attorney and counsellor at law, setting forth therein the amount of money collected, and from whom the same was collected; and shall forthwith notify such attorney and counsellor at law, of his intention to file such charges: which said charges shall be filed as aforesaid, and notice thereof given as above directed, at least ten days before the sitting of the court before whom such charges are to be tried.

SEC. 2. That if such court, on hearing the allegations and proofs submitted to them by the parties, shall be of opinion that such attorney and counsellor has collected money, as such attorney and counsellor, and, after reasonable request, had refused to pay the same over to the person authorized to receive the same, such court shall suspend such attorney or counsellor at law from the practice of law in any of the courts of this state, for any length of time in the discretion of said court: *Provided however,* that any succeeding circuit court holden in and for the county where such judgment of suspension shall have been entered up, may revoke the same, and reinstate such attorney or counsellor at law in all the privileges taken from him by such suspension: *And provided also,* that such attorney or counsellor at law shall be permitted to retain in his possession a reasonable fee for his services as such, together with all costs and charges by him expended for and on behalf of his employer. Any attorney or counsellor at law having collected money, as aforesaid, and having refused to pay the same over to any person authorized to receive the same, within a reasonable time after request, shall pay to the person authorized to receive the same, ten per centum, in addition to the sum so collected and withheld as aforesaid.

AN ACT to amend an act entitled "an act regulating the admission and practice of Attorneys and Counsellors at Law," approved January 31, 1824.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all proceedings against attorneys and counsellors at law, wherein a judgment of any kind for a contempt, or official mal-conduct shall be rendered against such attorney they may as in all other cases, prosecute an appeal or writ of er-

ror to the supreme court of the state, subject to the same regulations and restrictions as are provided by law in regard to the actions at law and in equity.

This act to be in force from and after its passage.

CHAPTER IX.

AN ACT to provide for the appointment of a Circuit Prosecutor, and defining his duties.

[APPROVED, JANUARY 20, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be a circuit prosecutor appointed in each judicial circuit in this state, who shall be chosen by a joint ballot of the senate and house of representatives, and shall hold his office for two years from and after his election.

SEC. 2. It shall be the duty of the circuit prosecutor, in each judicial circuit, to prosecute all pleas, complaints, indictments and presentments, and prosecute all suits against delinquent sheriffs, and collectors of the state and county revenue, and all other persons who now are, or may hereafter be indebted to the state, or any of the counties in their respective circuits, where the state or county may be a party, except in cases where complaint shall be made in the name of the state, for the benefit of some third person.

SEC. 3. And the said prosecutor, before he enters on the duties of his office, shall take an oath, which oath shall be administered by the president judge of the circuit for which he may be appointed, faithfully to discharge the duties of his office; which oath it shall be the duty of the president judge to administer and endorse on the back of the commission; and he shall moreover execute a bond with security, to be approved of by the president judge aforesaid, in the penalty of five thousand dollars, payable to the state of Indiana, conditioned for the faithful discharge of his duty as prescribed by law, and for the prompt payment of all sums of money that may come to his hands, by virtue of said office, to the person or persons authorized to receive the same; which bond it shall be the duty of the said president judge to take and forward to the office of the secretary of state, to be there filed; and suit may be brought on the same for delinquency and defalcation, as in case of other civil officers.

SEC. 4. That whenever a vacancy shall happen, by the death, resignation or removal from office, of the prosecutor in any circuit in this state, it shall be the duty of the governor, upon being notified of the same, to appoint some fit person to fill such vacancy until the next meeting of the general assembly.

Prosecutors' salary.

SEC. 5. Each prosecutor in this state, shall receive as a salary, the sum of one hundred and fifty dollars per annum, except the prosecutor of the fifth judicial circuit, who shall receive the sum of two hundred dollars per annum, payable quarterly.

Duty of prosecutors of the 5th circuit.

SEC. 6. The prosecutor of the fifth judicial circuit, shall be compelled to superintend and prosecute or defend, on the part of the state, all pleas whatsoever, that may be appealed or brought up by writ of error to the supreme court.

AN ACT to amend an act entitled, "an act to provide for the appointment of a Circuit Prosecutor, and defining his duty," approved January the 20th, 1831.

[APPROVED, FEBRUARY 1, 1834.]

Compensation.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That if any prosecutor shall fail to attend the regular term of any circuit court within the circuit for which he was elected it shall be the duty of the court to appoint some person to do and discharge the duties of prosecutor during the term, and to make and allow such person a reasonable compensation for discharging said duties, which allowance shall be entered in the order book of said court.

How paid.

SEC. 2. And it shall be the duty of the clerk of the court to make out a copy of such appointment, together with the order for compensation, and certify the same under his hand, and affix thereto the seal of the county; and the same upon being presented to the auditor of the state, shall be by him audited, and the amount of such allowance paid out of the state treasury.

Amount to be charged to regular prosecutor.

SEC. 3. And it shall be the duty of the treasurer, upon the payment of any such allowance, to charge the amount so paid, to the account of the regular prosecutor of the circuit in which it was made, and to retain said amount out of the annual salary of such prosecutor.

Repeal.

SEC. 4. So much of the act to which this is an amendment as comes within the purview of this act, be, and the same is hereby repealed.

CHAPTER X.

AN ACT concerning the Auditor of Public Accounts and the Treasurer of State.

[APPROVED JANUARY 7, 1831.]

Auditor's bond.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the auditor of public accounts, before entering upon the duties of his office, shall give bond with such security as shall be approved of by the governor, in the penal sum of ten thousand dollars, payable to the state of Indiana, conditioned for the true and faithful performance of the duties

enjoined and required by law to be performed by such auditor, and for the safe delivery to his successor in office, of all books, vouchers and other effects, belonging to his office, the execution of which bond, being duly acknowledged before some person authorized to take the acknowledgment of deeds, it shall be deposited by the governor in the office of the secretary of state and there recorded.

SEC. 2. The said auditor shall keep all accounts that may arise between this state and any other state or territory, and with the United States, or any individual, and shall keep fair, distinct, and clear accounts of all the revenues and expenditures of the state of every kind and nature whatever: all accounts between this state and the officers of government, entitled to receive from the treasury salaries or wages fixed by law: all accounts of the members of the general assembly, and of any person or persons having demands for money from the treasury, shall be rendered into the office of said auditor, where they shall, without delay, be liquidated, adjusted, and settled; and upon settlement of any such account, the said auditor, shall by warrant draw on the treasurer of state, direct the payment of the amount due the party entitled to receive the same, and having entered such warrant in his books and filed and deposited the accounts and vouchers in his office, he shall deliver the warrant to the party in whose favor it is drawn: *Provided however*, that the auditor shall audit no account, nor give any certificate or warrant which would enable any person to receive any money, unless in cases particularly authorized by law.

SEC. 3. The said auditor shall liquidate and adjust the accounts of all public debtors, and of all collectors of any revenue or tax, levied by act of general assembly, and payable into the treasury, and shall call upon such debtors or their representatives to render accounts at proper times, and discharge such balance as may be found due to the state, and upon their failure so to do, the said auditor shall take the most effectual steps for the speedy recovery of the same, and may employ attorneys for that purpose, and though it should appear on the trial that the defendant oweth no balance to the state, yet his having failed to render an account to the auditor, and to take from him his receipt, shall subject him to the payment of all costs incurred by such proceedings by the state.

SEC. 4. Any person or persons whatever having in his or their possession, any public books, papers, vouchers, or accounts, of any description, belonging or appertaining to the office of auditor of public accounts, are hereby authorized and required, to deliver the same to the auditor of this state, who is hereby authorized to receive the same, and any person or persons refusing or neglecting when demanded to deliver up, on oath, to the auditor, all books, papers, vouchers and accounts as aforesaid, shall forfeit and pay not exceeding five hundred dollars, to be recovered by motion of the auditor, or by presentment or indictment, in any court of competent jurisdiction; and the said auditor, shall, on demand, deliver up to the treasurer of state, who is hereby authorized to receive the same, all

books, papers, accounts and vouchers which may come into his possession, which belong or appertain to the treasury department.

How auditor's books shall be kept.

Letter book.

Aud't'r shall report to general assembly.

List of lands sold by U. S. to be annually procured by auditor.

Lists of lands to be forwarded to clerks annually.

Auditor's salary.

Treasurer's bond.

SEC. 5. The said auditor shall keep a book, in which shall be entered every warrant he draws on the treasury, in the order he issues them, in such manner as to shew the date, the name of the person in whose favor drawn, and the nature of the claim upon which it is founded, and shall carry such entry into a book of general accounts, under separate and distinct heads. He shall also keep a letter book, in which he shall register all letters by him written, relating to his official duties. He shall furnish the general assembly annually, during the first week of its session, and as often as they may require, a statement or abstract of the public accounts generally, together with an account of all balances due to and from the state; and all the books, papers, and transactions of his office, shall be open at all times to the inspection of a committee of the general assembly of either branch thereof, and also to the inspection of the governor.

SEC. 6. That said auditor shall immediately and annually hereafter, procure from the different land offices within the state, and from those which may hereafter be established, a complete register, catalogue and description, of each and every tract of land not already so registered and described, which has been or may be sold at such land offices, in such divisions as such land may have been sold, noting the whole number of acres in each division, subdivision, and tract, either sold or unsold, particularly stating the date of the entry, and whether a final certificate or receipt has been given to the purchaser therefor or not, and also each vacant tract of land; and each tract of land which shall stand forfeited to the United States, and owned by the United States shall be considered vacant. And the said auditor is further required, to procure at the same time, from said land offices, a complete map of all said lands, on a scale of one inch to the mile, particularly shewing on its face, all the lands sold, donated or patented, as well as all the lands vacant.

SEC. 7. The said auditor, on procuring such register's catalogues, descriptions, and maps, shall immediately and annually hereafter, on or before the first day of January, make out and forward to the clerks of the several circuit courts, of the different counties of this state, a copy of said register's catalogues, descriptions and maps of lands, contained in any such county, which when received by such clerk, shall be filed in his office.

SEC. 8. The salary of the auditor of public accounts, shall be four hundred dollars per annum, payable in quarterly payments, by warrants drawn on the treasurer, by the governor for that purpose, which salary shall commence on his entering upon the duties of his office.

SEC. 9. *Be it further enacted*, That the treasurer of the state, before entering upon the duties of his office, shall give bond with such security as shall be approved of by the governor, in the penal sum of thirty thousand dollars, made payable

to the state of Indiana, conditioned for the faithful performance of all duties enjoined, and required by law to be by him performed, for the faithful accounting for, and paying over, all moneys that may be received by him from time to time, by virtue of his office, and for the safe delivery to his successor in office, of all books, moneys, vouchers, accounts, and effects belonging to his said office; which bond shall be executed, acknowledged and recorded, in the same manner as is prescribed in the first section of this act, for the execution, acknowledgment, and recording of the bond to be given by the auditor.

SEC. 10. The said treasurer is hereby authorized and required, to receive of the several collectors of public revenue, all taxes arising on lands or other property, and all other public money payable into the treasury, by virtue of any act or acts of the general assembly.

SEC. 11. The treasurer shall keep in books provided for that purpose, correct accounts of all the money received by him from time to time, on the respective taxes and impositions, or from any other source, by virtue of any act or acts of assembly, also correct accounts of all sums of money by him paid out of the treasury, in pursuance of any such act or acts; which account shall be kept, so that the net produce of the several and respective taxes and impositions received into, and the money paid out of the treasury for every particular service, may appear separate and distinct from each other, and a full statement thereof, shall, by the treasurer, be laid before the general assembly annually, during the first week of its session, and as often as they may require the same; and the books, papers, and transactions of his office, shall at all times be open to the inspection of the governor, and also of a committee of the general assembly, or of either branch thereof.

SEC. 12. When any public debtor, shall hereafter pay any sum or sums of money into the public treasury, the treasurer, on receiving the same, shall forthwith make out a receipt for the amount, and carry the same to the auditor, who is hereby required to give to the treasurer his receipt therefor, and the treasurer shall deliver the said receipt to the person paying the money therein specified.

SEC. 13. The treasurer shall make out an account of all his payments, and of the warrants on which such payments were made, and shall deliver the same monthly, to the auditor, and a list of such payments and warrants, shall be made out by the auditor, in a book to be kept for that purpose.

SEC. 14. If the treasurer shall divert or misapply any money paid into the treasury, contrary to any act or acts of assembly, by which the same was raised or appropriated, the said treasurer, for such offence, shall forfeit his office, and be deemed incapable of holding any office of trust or profit whatever under the state, and shall moreover be liable to pay double the amount so misapplied, to be recovered by presentment or indictment in any court of competent jurisdiction, for the use of the state.

Treasurer shall receive state revenue, &c.

Treasurer's books, how kept.

Treasurer shall report to general assembly annually.

Vouchers to debtors paying over money, how given.

Treasurer's monthly accounts.

Penalty on treasurer for diverting or misapplying funds.

Committee shall examine treasurer's and auditor's offices, annually.

SEC. 15. There shall be a committee appointed by the general assembly annually, to examine into the state of the offices of the treasurer and auditor of state, and the said treasurer is hereby required to lay before such committee all the accounts and vouchers of the treasury, for money received or paid out for any purpose whatever, and produce the money in his hands; and the committee shall make a fair statement of all moneys received and paid out of the treasury, and for what purposes, and the money on hand, and report the same to the general assembly, who shall cause such statements of the receipts and expenditures of the public money to be attached to and published with the laws of every annual session of the general assembly. If the said committee shall discover that any money has been misapplied, they shall report the same to the general assembly, and in the examination of the auditor's books, papers and accounts, said committee shall mark (without defacing) all the treasurer's receipts which may be the foundation of a charge against him, in such of the auditor's accounts as are examined, in such manner as will shew that such receipts have been examined by said committee.

Committee shall report.

Shall mark treasurer's receipts.

Treasurer's duty as to seminary lands.

SEC. 16. That said treasurer, be required to record all returns of the commissioners of the seminary townships, to his office, and also to record all patents that may be issued for any of the lands sold in such townships, in a book to be kept for the purposes aforesaid.

Treasurer's salary.

SEC. 17. The salary of the treasurer of this state, shall be four hundred dollars per annum, payable in quarterly payments, by warrants drawn in his favor, for that purpose, by the auditor of public accounts, which salary shall commence upon his entering upon the duties of his office.

Salaries of state officers, when payable.

SEC. 18. The quarterly allowances of all salary officers in this state, shall be made payable on the first days of March, June, September, and December, of each year, and when any such officer shall come into office between the times named in this section of the act, it shall be the duty of the auditor to audit, and the treasurer to pay such officer, such fractional quarter, up to the commencement of the next regular quarter; and when any officer shall go out of office, his account shall be audited and paid in like manner.

CHAPTER XI.

AN ACT establishing a State Bank.

[APPROVED JANUARY 28, 1834.]

A state b'k. and branches created of Indiana, That there shall be and is hereby created and established, a state bank with ten branches, which, or so many

as shall be organized under this charter, to be known and styled the "State Bank of Indiana," and shall continue as such until the first day of January, eighteen hundred and fifty-nine.

SEC. 2. The directors of the state bank first appointed are authorized, and it is hereby made their duty to locate one branch of said bank at such place within each of the districts hereinafter named as they may deem expedient, to wit:

District number one, composed of the counties of Marion, Johnson, Shelby, Hancock, Madison, Hamilton, Boon, and Hendricks.

District number two, composed of the counties of Dearborn, Franklin, Ripley, Switzerland, and Decatur.

District number three, composed of the counties of Union, Fayette, Rush, Wayne, Henry, Delaware, and Randolph.

District number four, composed of the counties of Jefferson, Jennings, Scott, Bartholomew, and Jackson.

District number five, composed of the counties of Floyd, Harrison, Washington, Crawford, and Clark.

District number six, composed of the counties of Posey, Vanderburgh, Perry, Spencer, and Warrick.

District number seven, composed of the counties of Knox, Sullivan, Daviess, Gibson, Pike, and Dubois.

District number eight, composed of the counties of Orange, Lawrence, Monroe, Morgan, Martin, and Greene.

District number nine, composed of the counties of Vigo, Clay, Owen, Putnam, Parke, and Vermillion.

District number ten, composed of the counties of Tippecanoe, Fountain, Montgomery, Warren, Carroll, and Clinton, and of the territory lying north of Warren and Tippecanoe and west of Carroll and Cass, to the southern boundary of the north west district.

SEC. 3. It shall be the duty of the directors of the state bank, after the expiration of one year, to locate an additional branch in the district to be numbered eleven, composed of the counties of Adams, Grant, Huntington, Wabash, Miami, Allen, La Grange, Elkhart, and the unorganized territory attached to said several counties for judicial purposes: and after the expiration of three years to locate an additional branch of said bank within the district of country lying north of the Wabash river, to be numbered twelve, and not included in any of the districts before mentioned: *Provided*, that there shall be more than three counties in said district: and like proceedings shall be had in organizing the same as are herein prescribed for organizing the other branches; and the state stock therein shall be obtained in the same way, and paid over under the same restrictions and regulations as is provided for the other branches: *Provided however*, that nothing herein contained shall prevent the board of state directors from paying the same out of the sinking fund of the state, or any surplus funds under their control.

SEC. 4. Should any of the branches herein established fail to organize, as herein contemplated, it shall be the duty of the directors of the state bank, once in each year thereafter, if required by any number of the citizens who will be responsible

Name and style.

Directors to locate branches.

District No. 1.

Number 2.

Number 3.

Number 4.

Number 5.

Number 6.

Number 7.

Number 8.

Number 9.

Number 10.

Additional br's. to be located.

Branch failing to organize, books may be opened annually thereafter.

for the expense, to open books of subscription within such district, and locate and organize a branch therein at such place as they may select, if the amount of stock herein required shall be taken and paid for under the provisions of this act.

Office of state bank.
Meeting of directors.

Corporate powers.

SEC. 5. The said state bank shall keep an office at the town of Indianapolis, and the directors thereof shall meet and hold their sessions at least once in three months. It shall be a body corporate and politic, with power to sue and be sued, plead and be impleaded in any court of law or equity having jurisdiction, and to transact all other lawful business herein permitted them to do; and shall have power by and through her branches, and not otherwise, to loan money, buy, sell, and negotiate bills of exchange, checks, promissory notes, and other evidences of debt; to discount on banking principles and usages, bills of exchange, post notes, promissory notes, and other negotiable paper or obligations for the payment of money; to receive deposits, to buy and sell gold, silver, bullion, and foreign coins; to draw, issue, and put in circulation bills, notes, post notes, bills of exchange, and other evidences of debt, payable to order or bearer and not otherwise; and all such notes and bills put in circulation as money, except post notes and bills of exchange, shall be made payable on demand; and to exercise such other incidental powers as shall be necessary to carry on such business.

What real estate may be held by bank.

SEC. 6. The real estate, which it shall be lawful for said bank to purchase, hold and convey, shall be, first, such as shall be required for its immediate accommodation in the convenient transaction of its business; or second, such as shall have been mortgaged to it in good faith by way of security for stock, loans previously contracted, or for moneys due; or third, such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or fourth, such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; and the said bank shall not purchase, hold, or convey real estate in any other case, or for any other purpose; and all such real estate, not absolutely necessary for the convenient discharge of its business, shall be set up, at least once a year, at public sale. After having given thirty days notice of such sale, describing the property so to be sold, and the name of the mortgager, in at least one newspaper in the district where said bank is situate, and placing three written notices in the most public places in the town where the bank is located; and shall be sold if the same will bring the amount of the debt, interest, and costs for which the same may have been bought, received, or taken by the bank, and which shall remain after deducting all profits received therefrom.

Shall be sold &c.

Conveyances of real estate.

SEC. 7. All conveyances of real estate shall be signed by the president of the state bank and have affixed the seal thereof.

Specie payment of notes, &c.

SEC. 8. The said bank shall not at any time suspend or refuse payment in gold or silver of any of its notes, bills, or obligations due or payable, nor of any moneys received upon

deposit; and if said bank at any time refuse or neglect to pay any bill, note, or obligation issued by such bank, if demanded within the usual banking hours, at the proper branch where the same is payable according to the contract, promise, or undertaking, therein expressed, or shall neglect or refuse to pay on demand as aforesaid, any moneys received on deposit, to the person or persons entitled to receive the same, then, and in every such case, the holder of any such bill, note or obligation, or the person or persons entitled to demand or receive such moneys as aforesaid, shall respectively be entitled to receive and recover interest on their said demands, until the same shall be fully paid and satisfied, at the rate of twelve per centum per annum from the time of such demand as aforesaid; and any branch so failing to meet its engagements may be closed as in case of insolvency.

Payment refused, holders, &c. entitled to interest.

SEC. 9. The said state bank and each and every branch thereof shall mutually be responsible for all the debts, notes, and engagements of each other.

B'k and br's. responsible for each other.

SEC. 10. All suits or actions against said bank, on any contract or engagement made, or liability incurred by the board of directors, of the state bank, or on any contract or engagement made, or liability incurred by the board of directors of any branch, or on any bank bill or note, shall be brought against the State Bank of Indiana.

Suits against the b'k, how brought.

SEC. 11. The process in such case shall be a summons, and shall be served on the president of the state bank, in all cases where the contract, engagement or liability sued for, shall have been made by the board of directors of said bank; and in all cases where the contract, engagement or liability sued on, has been made or incurred by a branch, the process shall be served on the president of such branch; and so also where the suit shall be brought on any bank bill or note, the process shall be served on the president of the branch at which such bill or note shall have been made payable: or in all such cases, a copy of the process may be left at the banking house, or place of doing business of the state bank, or of the proper branch, as the case may be, during the usual hours of business, which shall be good service. And it is hereby made the duty of the president, or any other officer, of any branch, knowing of such service, forthwith to notify the president and directors of the state bank thereof. In all suits brought against said bank, on any note, engagement, or liability of any branch, such suit shall be brought in the county where such branch may be situate; and all suits brought against the state bank on any note, engagement, or liability of the state bank, shall be brought in the county of Marion.

Process, and on whom served.

Copy of process left at b'k house, good service.

Direct'rs, &c. of st. b'k to be notified of suit against a branch.

Suits, where to be brought.

SEC. 12. There shall be no stay of execution on judgments against the bank for notes issued or deposits made therein, except as herein provided for.

No stay of execution.

SEC. 13. Said bank shall be entitled to charge and receive for moneys loaned, six per centum per annum and not higher, but the same may, according to bank rules, be discounted and taken in advance out of the sums loaned.

Interest chargeable at bank.

Dividend of profits among stockholders.

SEC. 14. The profits arising, after paying expenses and reservation for a contingent or surplus fund, shall be divided among the stockholders, according to the amount of stock owned and paid in by each; and in making this calculation and division of profits, each branch shall be independent of the others, and its own profits be divided among its own stockholders.

Fund retained for education, in lieu of other tax.

SEC. 15. There shall be deducted from the dividends, and retained in bank each year the sum of twelve and a half cents on each share of stock, other than that held by the state; which shall constitute part of the permanent fund to be devoted to purposes of common school education, under the direction of the general assembly, and shall be suffered to remain in bank, and accumulate until such appropriation by the general assembly; and said tax shall be in lieu of all other taxes and assessments on the stock in said bank. And in case of an ad valorem system of taxation being adopted during this charter, the said stock shall be subject to the same ratio of taxation as other capital, not exceeding one per centum including the aforesaid tax, and the said tax shall only be assessed on such portion of the stock as shall have been paid, and on account of which, the stockholders shall not be indebted to the state.

Ratio of taxation under the ad valorem system.

Persons ineligible to offices in the bank, &c.

SEC. 16. The person administering the government of this state, secretary of state, treasurer, auditor of public accounts, commissioner of the canal fund, judge of the supreme or any inferior court, or any person holding an office or appointment under the authority of the general government, shall not, while in such office, hold the office of president of the state bank, director of the state bank, or president, director, or cashier of any branch, nor that of a member of the general assembly; nor shall any president, cashier or director of any branch at the same time hold the office of president or director of the state bank, on the part of the state, or the office of president, director or cashier of another branch.

Notes, by whom signed & where payable.

SEC. 17. The notes issued by said bank shall be signed by the president of the state bank, and shall be made payable at the branch which shall issue the same, and shall be signed by the cashier of such branch.

Lands mortgaged to the bank and sold for taxes may be redeemed within 5 years.

SEC. 18. No sale or forfeiture for unpaid taxes of any real estate, mortgaged to said bank to secure the payment of loans made, shall, until the lapse of five years from such sale, operate to prevent said bank from redeeming the same, on payment of such taxes and damages and interest thereon, as are required by law in other cases of lands forfeited and sold on account of unpaid taxes, if at any time after such sale and forfeiture, such real estate shall become the property of the bank for the payment of any such debt.

Shall not buy or sell goods, &c.

SEC. 19. It shall not be lawful for said bank at any time to use or employ any part of its capital stock or other funds in the buying or selling of goods, wares, or merchandize, or in any other business or dealing, than is by this act authorized and permitted.

Public deposits may be received,

SEC. 20. It shall and may be lawful for said bank or any branch thereof to accept, receive, and become responsible for

the deposits and public revenues of the United States, upon such terms and conditions as may be agreed on by the agents of the general government and a majority of the directors of the state bank.

SEC. 21. That it shall be lawful for said bank to receive on deposit (except as above prohibited) moneys, bullion, plate, and other articles of value of small bulk, on such terms and conditions as may be agreed upon by the parties.

Articles receivable on deposit.

SEC. 22. No note shall be issued of a less denomination than five dollars; and the legislature hereby reserves the right, at any time after ten years, to restrict and prohibit the circulation and issue of any note for less than ten dollars.

Issue of notes under \$5 not allowed.

Rights reserved to the legislature.

SEC. 23. There shall be in said bank and branches an account created, opened, and kept with the commissioners of the sinking fund, in which they shall be credited with the dividends of profits accruing to the state on her stock, and all other sums passing through or accruing in said bank properly belonging to that fund, which fund shall be under the control and direction of the said commissioners as herein provided.

Accounts opened with the com'rs of the sinking fund.

SEC. 24. It shall not be lawful for the directors of the said state bank to locate any other branch or branches of said bank than is herein authorized.

No other br. to be located.

SEC. 25. The capital stock of said bank may be increased by individual subscriptions at any one or more branches, by and with the assent and concurrence of the legislature and directors of the state bank.

Capital of brs., how increased.

SEC. 26. The general assembly may at any time appoint an agent to examine the state and condition of said bank, and each and every branch thereof, who shall have the same power and rights as examiners appointed by the directors of the state bank; and when any agent as aforesaid shall find and report, or the governor of the state shall have reason to believe that the charter has been violated, it may be lawful for the legislature to direct, or the governor to order a *scire facias* to be sued out of the Marion circuit court in the name of the state (which shall be executed upon the president of the state bank for the time being, at least fifteen days before the commencement of the term of said court) calling on the said corporation to shew cause wherefore the charter hereby granted shall not be declared forfeited; and it shall be lawful for the said court, upon the return of said *scire facias*, to examine into the truth of the alleged violation; and if such violation be made appear, then to pronounce and adjudge that the said charter is forfeited and annulled; and every issue of fact, which shall arise in such proceeding, and may be joined between the state and the corporation aforesaid, shall be tried by jury, and it shall be lawful for the court aforesaid to require the production of such of the books of the corporation as it may deem necessary for the ascertainment of the controverted facts; and the final judgment of the court aforesaid shall be examinable in the supreme court of the state, by writ of error, and may be there reversed or affirmed according to usages of law; and it shall be the duty of the

Agent may be appointed by the gen. assembly.

Scire facias against state b'k when and for what cause to be issued

Counsel to be employed. governor to employ counsel on behalf of the state, to prosecute such writ of *scire facias*.

Annual meeting of the stockholders of the branch. SEC. 27. That a general meeting of the stockholders of each branch shall be held annually, at such time as the directors of the state bank shall direct, at which time elections for directors shall take place, to which meeting the directors of the preceding year shall exhibit an exact and particular statement of the state, condition and affairs of said branch; and general meetings of the stockholders may be held at any other time, when ordered by the board of directors of the branch.

Certificates of stock to issue, how transferred. SEC. 28. Certificates of stock shall be issued to stockholders signed by the president and cashier of the proper branch, and may be transferred on the books of the branch to be kept for that purpose, and not otherwise; in which case the old certificates shall be surrendered and new ones issued. No stock shall be transferred, by any stockholder, when any debt is due, or is then owing and to become due from such stockholder, but by the consent of the directors of the branch, and such stock books shall, at all reasonable times during the usual hours of transacting business, be kept open for the examination of any person, having in his possession any note, bill, or obligation on any branch, then due, and the payment of which shall be refused. And in case of any officer having charge of such book shall refuse to permit such examination, he shall for every such offence, forfeit the sum of fifty dollars, to be recovered in an action of debt by the person so refused.

Penalty for refusing to permit examination of stock book.

Stock may be sold on execution. SEC. 29. Stock shall be considered as personal property, and may be sold on execution, and transferred on the books of the branch by the officer selling the same, but in all cases be subject to a lien in favor of the bank, for all debts *bona fide* due, or then owing and to become due the same, from the owner.

Rules concerning voting for director.

SEC. 30. After the first election, no stockholder who shall not have held his stock, for which he votes, for three calendar months previous to the day of election, shall be entitled to vote, and the number of votes to which stockholders shall be entitled, in voting for directors, shall be in the proportion following: that is to say, for each and every share, not exceeding four shares, one vote; for every two shares above four shares and not exceeding thirty, one vote; for every four shares above thirty and not exceeding ninety, one vote; for every six shares above ninety and not exceeding one hundred and fifty, one vote; and for every ten shares above one hundred and fifty, one vote. But no person, co-partnership, or corporation, shall be entitled to a greater number than one hundred votes. In all elections, votes may be given either in person or by proxy, but no person shall vote by proxy more than one hundred votes, and no individual stockholder, who shall be a resident of the county where the election is to be held at the time of such election shall vote by proxy, unless in case of unavoidable absence, except females or minors.

Prest. &c. shall not vote as SEC. 31. No president, cashier, clerk, or teller of said bank or branch thereof, shall be permitted to vote at any elec-

tion for directors, as the attorney, agent, or proxy of any stockholder. No president, cashier, or director of the state bank, or president or cashier of either of the branches, shall, during the term of his office, be eligible to a seat in either branch of the general assembly of this state.

SEC. 32. The president of the state bank shall be elected by the general assembly, by ballot of each house separately: *Provided*, that no person shall be elected as such president unless he gets a separate majority of the votes given by each house: *Provided however*, that after three attempts at an election as aforesaid, should no concurring choice be made, the two houses shall proceed to elect the said president by joint ballot of both houses; and the person obtaining a majority of all the votes given on such ballot, shall be declared duly elected as in other cases. Such president shall hold his office for five years unless sooner removed by joint resolution, and another appointed in his place.

SEC. 33. It shall be his duty to preside at all meetings of the board and decide all questions on which the board is equally divided, by his casting vote—he shall have power to call special meetings of the board whenever he may find it necessary, and do and transact all other business naturally appertaining to his office or conferred upon him by this act.

SEC. 34. The president of the state bank shall receive as a compensation, to be allowed by the board of directors of said bank, an annual salary, not less than one thousand, nor more than fifteen hundred dollars, payable quarterly.

SEC. 35. The general assembly shall elect four directors of the state bank, in the manner prescribed for electing the president thereof, who shall respectively hold their offices one, two, three, and four years, one going out of office each year, and shall at their first meeting after their appointment, determine by lot, the periods they shall respectively hold their offices. Such directors, or any one of them, may at any time be removed by joint resolution of the general assembly. Their compensation shall be fixed by the board of directors of the state bank; but the compensation of any member of the board shall not be increased during the term of his appointment.

SEC. 36. Vacancies occurring in the office of president or of any state director of the state bank, shall be filled by appointment to be made by the governor, until the same shall be filled by the general assembly, as in this act is provided for the election of the president and directors of the state bank.

SEC. 37. The board of directors of each branch shall annually and as often as a vacancy may occur, elect one director for the state bank, whose compensation shall be fixed by the branch directors, and paid by such branch.

SEC. 38. It shall be the duty of said bank and branches to receive and pay out the revenues and funds of the state, under the direction and control of the treasurer of state, whenever the legislature may so direct.

SEC. 39. The board of directors of the state bank shall

Prest of st. b'k, how elected.

Term of office 5 years; removable by jt. res.

Shall preside, give casting vote, call special meetings, &c.

His salary.

Four directors of st. b'k to be elected by gen assembly, their term of office.

Removable by joint resolution, their compensation.

Vacancies of pres't, &c. of st. b'k, how filled.

One director of st. b'k elected annually by each branch.

Revenues to be received and p'd out by the bank.

St. b'k to ap-
point cashier,
&c.

have power to appoint a cashier and such other inferior officers and agents as may be necessary to carry on their business, to fix their term of office and compensation, and require such bond and security from them as they may from time to time deem expedient.

Power of the di-
rectors of the st.
b'k over the brs.

SEC. 40. The directors of the state bank shall have power to limit and control the amount of discounts and loans of the branches after they shall amount to once and a quarter the amount of capital stock paid in; to settle and adjust the accounts and balances between them; and for good cause may suspend the operations of the same. They shall have power, and it shall be their duty to regulate and equalize the state funds and public deposits that may be in bank, and may transfer the same from one branch to another as circumstances may require. But they shall in no case withdraw any part of the capital stock of any branch, or any part of its own local funds, without the consent of the board of directors of such branch, to be used in any other branches, except in cases requiring such branch to be closed as herein provided for; and they shall have power to make and prescribe all necessary by-laws to carry the powers herein conferred into effect.

Examination of
branches by di-
rectors of s. b'k.

SEC. 41. They shall have power to appoint one or more of their number to visit and inspect the condition and affairs of each branch, when and as often as to them shall seem necessary, and it shall be their duty to make such examination at least once in six months, and also at any other time when thereto required by the directors of any branch. No director shall be appointed by the State Bank, to examine, visit, and inspect the condition and affairs of any branch from which he has received his appointment.

Powers in such
examination.

SEC. 42. The person or persons so examining shall have power to examine on oath or affirmation, (which they are hereby authorized to administer,) all the officers, servants, or agents of any branch, or any other person, in relation to the affairs and condition of such branch; and they shall have power to examine all the books, papers, notes, bonds, and other evidences of debt of any branch; to compare the books, funds, and property of said branch, with their returns and statements made thereof; to ascertain the amount of money and available funds on hand, and generally to make every other inquiry and examination necessary to ascertain the actual condition of such branch.

Directors of st.
bank to require
rep'ts from br's.

SEC. 43. The board of directors of the state bank shall have power to require of the board of directors of each branch, reports of their business and condition, as often as shall be expedient, and not less than once each month.

Branches may
be suspended.

SEC. 44. They shall have power whenever they shall ascertain in any manner, that any branch is insolvent, or is mis-managing its affairs, whereby the interest of the other branches is endangered, or that a branch hath violated any of the provisions of this act, or any other act binding upon them, or that any branch hath neglected or refused to comply with any legal order or direction of the board of directors of the state bank,

and it is hereby made the duty of said board forthwith to suspend the business of such branch, and the power of the branch directors over the same, and if the interest of the state, or the safety of the other branches requires it, to close up the affairs and business of said branch entirely; and to effect the same, they are hereby vested with power to appoint a receiver or receivers who shall, under their direction and control, collect and receive the rights, credits, and effects due such branch, and turn them into available funds; to settle, adjust and compound the same; to settle, adjust, and pay off the debts due by such branch; and if any portion of the capital stock of such branch, or stock notes given therefor, shall be unpaid, to sue for, and collect the same, as also all contributions required from stockholders under the provisions of the one hundred and second section of this act, or so much as shall be necessary to meet the demands against such branch.

Receiver to be
appointed to
take charge of
effects.

SEC. 45. That a copy of such order suspending or closing any branch and appointing a receiver or receivers to take charge of the same, signed by the president and attested by the clerk of said board and the seal of said state bank, shall be sufficient to authorize such receiver to seize and take charge of the same; and all officers, stockholders, servants, and agents of such branch shall be required to obey and submit to the same, and in default may be indicted for misdemeanor and fined and imprisoned at the discretion of the jury trying the same; and any person fraudulently holding and concealing any of the property or effects of such branch from such receiver shall, upon conviction thereof upon presentment or indictment, be fined in any sum not exceeding one thousand dollars, and confined at hard labor in the state prison for any term of time, not less than one year nor more than ten years.

Debts of a fail-
ing branch,
how paid.

SEC. 46. It shall be the duty of the directors of the state bank to provide for the payment of all the debts of a failing branch that shall remain due after all the property, real and personal, rights, credits, and effects, and all the stock of such failing branch, and the contributions of its stockholders, shall have been first applied; and for that purpose they are hereby authorized to call on the other branches for their respective proportions; arranging the time of making such calls so that the whole amount of such debt shall be paid within one year after such failing branch shall have been suspended.

SEC. 47. And if it shall so happen that the property, stock, contributions, or effects of such failing branch shall not by that time have been turned into available means, the same shall be collected and distributed among the several branches to meet the advances by them made to pay the debts of such failing branch.

Brs. reimbursed,
in payment for
advances to fail-
ing branches.

SEC. 48. After payment of all demands against a failing branch, if any of its effects, of whatsoever kind or description, shall remain, the same shall be first applied to the payment of the state stock therein, and shall be divided among the other branches and used as capital in the same as so much state stock;

Effects of failing
br's. after pay-
ment of debts,
how disposed of.

and if any residue should still remain, it shall be paid over to the other stockholders in their due proportions.

Order of suspension, &c. how made.

SEC. 49. Any order of the board of directors to suspend or close a branch shall be carried by at least the votes of two-thirds of the members present at some meeting, to attend which all the members of the board shall have been notified; and the question shall be taken by ayes and noes, and the same recorded on the minutes of the board.

Regulations respecting suits, &c. against suspended branch.

SEC. 50. The order of the board of directors of the state bank suspending any branch, shall likewise have the effect to suspend all suits, judgments, orders, decrees, and executions, for any claim or demand which said branch should have paid; nor shall any such suit be progressed in until the matter in controversy shall have been submitted to the board of directors of the state bank, or the persons by them entrusted with the affairs of said branch; and if, on such submission, the justice of such claim shall not be admitted and the same be agreed to be paid on the closing up of the affairs of said branch, the same may progress to judgment; but execution thereon, and all other executions or decrees, shall remain until one year from the time such branch was suspended.

Election of br'ch directors, &c.

SEC. 51. The directors of the state bank shall have power to regulate the manner of holding elections for directors of the branches, and may, if necessary, change and fix the time of holding the same, of all which elections reasonable notice of time and place shall be given.

Order for new election, when to be made.

SEC. 52. And in case an election of directors should not be made on the day when the same should have been, the directors of the state bank shall order a new election, and the directors for the time being shall continue to hold their offices until such election takes place and their successors are qualified.

Failure to elect directors of state b'k, no dissolution of the corporation.

SEC. 53. No failure on the part of the general assembly or of the branches to elect directors of the state bank shall be considered as a dissolution of this corporation, but the directors for the time being shall continue to hold and exercise their offices until their successors are chosen and qualified.

Dividends regulated.

SEC. 54. Said directors shall have power to regulate and control the dividends of profits so that the capital stock shall never be diminished, and to create and keep up a surplus fund that shall never be less than one-sixteenth of the capital stock in each branch.

Interest unpaid not to be included in dividends

SEC. 55. In the calculation of the profits previous to a dividend, interest then unpaid, although due, or accrued on debts owing to any branch, shall not be included.

Dividends, when declared.

SEC. 56. Dividends of profits shall be declared semi-annually.

Branch may be closed after the first year when not producing 6 per cent. pr annum.

SEC. 57. They shall have power to close any branch which, after the first year, shall not yield a profit of six per cent. per annum upon the capital actually paid in, and the same may be proceeded in as in case of insolvency, unless the discounts shall have been limited and controlled by the directors of the state bank, so as to prevent said stock from yielding such profit.

SEC. 58. They shall cause to be opened and kept, by their clerks, accounts with each branch, shewing the operations of each, and keeping constantly in view their business and condition which shall be at all reasonable times open to the inspection of any stockholder, and of any person authorized by the legislature to inspect the same.

SEC. 59. They shall likewise keep a record of all their proceedings, in which all their orders, votes and resolutions shall be entered, with the ayes and noes on all questions, which shall be open to like inspection.

SEC. 60. They shall apportion the salary of the president and all other officers, agents, and directors of the state bank and all other general expenses, among the several branches, according to the amount of stock in each, and shall have power to demand and receive the same.

SEC. 61. It shall be the duty of the directors of the state bank to keep and preserve the original books of subscription of stock, and to cause to be returned to them from each branch every six months a statement of all transfers of stock made the preceding six months.

SEC. 62. They shall also procure and take charge of the plates on which the paper of said bank shall be printed, and shall cause a sufficient amount thereof to be printed from time to time as occasion may require.

SEC. 63. They shall deliver on the order of the board of directors of each branch an amount of such paper not exceeding twice the amount of the capital stock paid in at such branch, except when more shall be wanted to replace that which may have been worn out, defaced, or lost, in which case all so defaced shall be returned to said board of directors of the state bank and destroyed; and they shall give no other or greater amount for paper lost than they shall have good reason to believe is actually lost by circulation or otherwise.

SEC. 64. Five directors, with the president, shall be necessary to constitute a board for the transaction of business. But in case of sickness or absence of the president, his place may be supplied for the time being by any director whom the board may appoint.

SEC. 65. It shall be the duty of the board of directors of the state bank, in the first week of the session of the general assembly in each year, to make report to both houses of the general assembly of the affairs and business of said bank and each branch thereof, setting forth in regard to each:

- 1st. The amount of available funds on hand, designating each kind.
- 2nd. The amount of notes discounted.
- 3rd. The amount of bills of exchange.
- 4th. The amount and condition of the surplus fund.
- 5th. The amount of notes in circulation.
- 6th. The number of officers and servants, and the amount of compensation to each.
- 7th. The amount of rents paid, if any.
- 8th. The value of houses used for banking purposes.

9th. The value of other real estate, and whether the same has been regularly offered for sale, as by this act required.

10th. The amount of debts due to, and from other banks.

Branch directors shall report to the legislature annually.

11th. All such other matters as shall by them be deemed material and important, or shall be required of them by the legislature. A like report shall be furnished to the general assembly, by the board of directors of each branch. Such report made by the directors of each branch, shall contain such statement of the condition of the same as aforesaid, as the same is found on the third Saturday of November, in such year, at 2 o'clock in the afternoon.

Oath of officers.

SEC. 66. The directors, and all other officers and agents of the state bank, and of each branch shall severally, before they enter upon the duties of their office, make oath or affirmation, well and faithfully to discharge the duties of the same.

Election of branch director.

SEC. 67. The stockholders of each branch shall by ballot annually elect not less than seven, nor more than ten directors for such branch, the number to be settled by the directors of the state bank; and the directors of the state bank shall appoint three directors for each branch; such branch directors shall hold their office for one year, and until their successors are chosen and qualified.

President, cashier, &c., how chosen.

SEC. 68. The said branch directors, at their first meeting after each election, shall choose one of their number to be president, and shall have power to appoint a cashier and such other officers and agents as they may deem necessary, whose term of office, and whose compensation, together with that of the president, shall be established by the directors. They shall also have power to fill all vacancies occurring in their own body, except in those appointed by the state bank, which shall be filled by those directors of the state bank, appointed on the part of the state.

Vacancies in board, how filled

Branch director on the part of the state, how long eligible.

SEC. 69. No director appointed by the directors of the state bank shall be chosen more than twice in three years.

No compensation to branch director, except &c.

SEC. 70. No branch director, except the president, shall receive compensation for his services unless by vote of the stockholders.

Who may be branch directors

SEC. 71. No person shall be elected a director of a branch by the stockholders, who shall be in arrear to such branch, nor unless such person shall be a citizen of the state, and a stockholder owning in his own right and not in trust, at least five shares in such branch. But in case there should not be a sufficient number of stockholders owning five shares to constitute the directory, they may be elected out of those having the highest number of shares.

Seat of director may be vacated.

SEC. 72. If during his term of office any director shall become in arrear, or fail in business, remove from the state, or cease to own the requisite amount of stock, or otherwise become disqualified, it shall be the duty of the said board of directors forthwith to vacate his seat, and appoint another in his place.

SEC. 73. No person shall be a director in more than one branch at the same time; nor shall two or more partners be at the same time directors of the same branch, or of the state bank and a branch thereof; nor shall a director of any moneyed corporation having power to discount and to receive deposits, be a director of any branch.

SEC. 74. The board of directors of each branch shall have power to require such security from their officers and agents for the performance of their duties as they may deem necessary.

SEC. 75. It shall be their duty to make report of their business, and condition of their branch to the board of directors of the state bank, once in each month, and oftener if thereto required by said board, setting forth all the particulars required in their reports to the legislature, and shall also send copies of their monthly reports to each branch.

SEC. 76. The board of directors of each branch shall keep a book or books, in which shall be entered and faithfully recorded a journal of all their proceedings, which book shall be open to the inspection of all the stockholders, at all regular meetings of the same; and also, be open to the inspection of any three stockholders, holding together in their own right, twenty shares of stock, on application by them made to the president or cashier.

SEC. 77. All elections by the several boards of directors shall be viva voce and recorded.

SEC. 78. The directors of each branch shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem needful, touching,

1st. The government of their respective branches, and the management and disposition of its stock, business, property, estate, and effects;

2d. The time, manner, and terms upon which discounts and deposits shall be made and received in, and by the same;

3d. The duties and conduct of the officers, clerks and servants employed by the same, and

4th. All such matters as may appertain to the concerns of said branch:

Subject to the control of the directors of the state bank in the cases and according to the powers herein given to the directors of the said state bank.

SEC. 79. In the management of their business the board of directors shall observe the following rules:

1st. No branch shall loan money on the security of its own stock.

2d. No person shall be accommodated with a loan while in arrear for stock, for interest, or for loans had either on his own account or as security for others, and then due, unless the sums so due be retained and first paid out of such loan.

3d. In the renewal of notes the security shall never be lessened.

4th. No director shall be allowed to borrow out of bank on any other than the usual banking terms.

5th. The president, cashier and directors for the time being

of any branch or of the state bank shall not be permitted to endorse for each other. Nor shall they vote on questions in which they are interested.

6th. On all applications for loans of five hundred dollars or upwards, there shall be five concurring votes out of seven, and so on in proportion if any greater number is present; and if any such application is granted, the ayes and noes shall be entered in the minutes of the board.

7th. No corporation of any description shall, at any one time, be permitted to be indebted, at one branch, in a greater sum than five thousand dollars, for moneys loaned, unless by permission of the board of directors of the state bank.

8th. It shall be the duty of the board of directors of each branch, as often as once in three months, to cause a strict examination to be made of the accounts of the cashier, and a full and complete settlement thereof; and a full statement thereof shall be entered on the journals of the proceedings of said board.

9th. No person shall be entitled to receive any dividend of profits on stock owned, while indebted to said bank for any debt or demand then due and payable, but the same shall be placed to his credit until such debt or demand is paid.

10th. Seven members shall be necessary to constitute a board for the transaction of business.

Penalty for making false statements, entries, &c.

SEC. 80. Every officer, agent or clerk of said bank or branches, who shall wilfully and knowingly subscribe or make false statements, or false entries in the books of such bank or any branch, or shall wilfully and knowingly subscribe or exhibit false papers with the intent to deceive any person authorized to examine or inquire as to the condition of said corporation, or shall wilfully and knowingly subscribe or make false reports, shall be deemed guilty of felony, and shall be subjected to imprisonment at hard labor in the state prison, for such term of years as the jury trying the case may think proper, and likewise any commissioner or examiner wilfully and knowingly subscribing or making any false report, shall be deemed guilty of felony and subjected to like penalties.

Embezzling, penal for.

SEC. 81. Any officer, agent, or clerk employed in said bank or any branch, who shall embezzle or appropriate the property or funds of said bank or any branch, with the intent to cheat and defraud the same, shall be deemed guilty of felony and punished in like manner.

Capital stock \$1,600,000.

SEC. 82. The capital stock of said bank shall be one million six hundred thousand dollars, in shares of fifty dollars each, one half thereof to be subscribed for, and owned by the state of Indiana, and the other half by individuals or corporations.

Capital stock divided among the brs. equally.

SEC. 83. That said capital stock shall be equally divided among the several branches hereby created, making the sum of one hundred and sixty thousand dollars at each branch, and if at any time that amount cannot be profitably used in any branch, the directors of the state bank by and with the consent of the directors of such branch, may withdraw such portion of the state capital as cannot be profitably employed in said branch,

A portion of the st. stock may be withdrawn

and place it in such of the other branches as can most advantageously use the same, and such portion, when placed in a branch, shall, for the time it shall remain therein, be considered as so much of an addition to its capital, and it may govern its operations accordingly; and the branch from which such state stock is taken, shall be regulated in its operations [according] to its remaining capital; and the directors of the state bank may, when they deem it expedient, withdraw such portion of the state stock from any branch, for the purpose of being replaced as state stock in the branch from which it shall have been taken, or in any new branch that shall be organized, or in any of the other branches.

SEC. 84. The directors of the state bank after giving thirty days notice in all the newspapers of this state shall cause to be opened, books for the subscription of stock at such places within the districts aforesaid as they may designate for the location of branches, under the direction of three commissioners, whom they shall appoint. Said books to be kept open between the hours of 9 and 12 o'clock, A. M. of each day for the space of thirty days.

Subscript'n b'ks to be opened. Directors of st. bank appoint commissioners.

SEC. 85. If stock to the amount of eighty thousand dollars shall be subscribed within said time for either of the branches aforesaid, it shall be the duty of the commissioners having charge of the stock subscription books, to examine as to the responsibility of the subscribers for the stock, and if by them deemed responsible, or not, to make their report accordingly in writing under their signatures, to the directors of the state bank without delay.

Duty of commissioners.

SEC. 86. If on closing the books at any of said places it shall be found that more than eighty thousand dollars have been subscribed for any branch, the excess shall be taken first from such as reside out of this state; then from corporations, and should there still be an excess, the same shall be taken in proportion from the subscriptions over five hundred dollars until all are reduced to that amount, then from all equally, until the whole amount shall not exceed eighty thousand dollars.

Subscription for stock, mode of reducing in case of excess.

SEC. 87. If a sufficient amount of stock shall be subscribed for by responsible persons at any of the branches, it shall be the duty of the state bank directors as soon as they can ascertain when said branches can be furnished with the capital on the state stock in said branches, to give notice to the subscribers for stock, of the time when the first payment on their stock shall be made, which notice shall be by publication in the nearest newspaper to each branch, sixty days before any payment shall be required to be made.

Notice by dir. of st. b'k to stockholder, for first instalment.

SEC. 88. The directors of the state bank at the time of giving the notice as to the payment of the first instalment on the stock, shall also, in like manner, give notice, that an election will be held on the day succeeding that appointed for the payment of the stock, between the hours of 10 A. M. and 4 o'clock, P. M. of said day, at some public place, at the point where the branches shall be located, for the election of direc-

Notice for election of br. dirs. on the part of stockholders.

tors on the part of the stockholders in their respective branches.

Duty of com'rs
in case of non-
paym't of first
instalment.

SEC. 89. In case of failure, on the part of any subscribers for said stock to meet the first instalment, the commissioners having in charge the subscription books for stock, shall immediately re-open said books and keep the same open for the space of twelve hours, for the purpose of permitting subscriptions for such share or shares on which payment has failed to be made; and should there be more subscribers than there are shares to be subscribed for, preference shall be given to such as are not holders of shares, and the shares shall be equally distributed among the remaining subscribers; and if the number of subscribers shall still more than equal the number of shares to be taken, those who shall have shares shall be decided by lot under the direction of said commissioners.

Individual stock
in brs., how p'd.

SEC. 90. The subscribers for stock at each of the branches shall, at the time appointed by the president and directors of the state bank, pay, in specie, the sum of thirty thousand dollars to the commissioners having charge of the stock subscription books for the respective branches, as the first payment on their stock; and the residue of said stock shall be paid in specie in two equal annual instalments: and each resident stockholder in said branches shall have the right of having the instalments that shall become due on his stock paid for by the state of Indiana, in specie, to the proper branch, upon securing the amount of the same to the state, to be repaid on or before the expiration of nineteen years from the year eighteen hundred and thirty-four, with interest thereon at the rate of six per cent. per annum, payable semi-annually, by giving a bond and mortgage on the fee simple of unincumbered real estate, the fair cash value of which shall be (exclusive of perishable improvements) at least equal to twice the amount of such loan. The said bond and mortgage to be taken in the manner and subject to the provisions hereinafter specified.

State stock in
br's. how sub-
scribed and paid
for.

SEC. 91. As soon as the stock shall have been subscribed and paid for at any of the branches as aforesaid, it shall be the duty of the president and directors of the state bank to subscribe for eighty thousand dollars of stock in such branch, on the part of the state; of which fifty thousand dollars in specie shall be paid by the president and directors of the state bank, to such branch at the first general meeting of the board of directors of the state bank after the organization of the board of directors of any such branch; and at the same time the president and directors of the state bank shall give to the president and directors of the branch an order on the commissioners for the subscription of stock, for the payment of the thirty thousand dollars paid on the stock of said branch. And the residue of the state stock shall be paid in like manner, in two equal annual instalments from the time of said general meeting of the president and directors of the state bank.

Gov's. procla-
mation authori-
zing b'king ope-

SEC. 92. When the president and directors of the state bank and branches shall have been qualified by taking their oath or affirmation of office, and shall have organized them-

selves and informed the governor of the state that the state bank and branches are prepared to enter upon the business of banking, he shall, by proclamation, authorize said state bank and branches to commence their banking operations.

SEC. 93. At the first general meeting of the board of directors of the state bank they shall deliver to the president and directors of each branch the by-laws, rules, and regulations for the same, together with the bills, notes, checks, books, and papers provided for such branch, taking the necessary receipts therefor; and also for the amount of stock, paid on the part of the state, in such branch, a duplicate of which receipts shall be filed by the president and directors of the state bank, in the office of the treasurer of state.

SEC. 94. Should any failure of payment on the first, or any subsequent instalment, take place on the part of any subscribers for said stock, then and in such case, the party failing shall forfeit and pay, if for the first instalment, the sum of ten dollars per share, to the president and directors of the state bank, to be recovered by an action of debt; and, in case of a failure to pay any subsequent instalment at the time required by this charter, the president and directors of the branch shall be at liberty to sell and transfer any such share or shares of stock at public auction, after giving ten days notice thereof in writing, put up at the door of said branch bank; and any surplus remaining, after paying the amount due and incidental charges, with ten per cent. on the amount paid on such share or shares on which such instalment shall be due, shall be paid over to the owner or owners of such stock previous to the sale thereof; and, if the same cannot be sold for sufficient to pay up the instalment then due thereon, the same shall be forfeited and become the property of the proper branch.

SEC. 95. The dividends declared by the directors of the state bank, on the state stock, and on such portions of the stock belonging to the other stockholders who have had their stock paid for through the medium of the state loan, and which shall not have been paid for by such stockholders, shall be paid by the directors of the state bank and branches to the board of commissioners of the sinking fund, and not otherwise, unless upon the written instructions of the board to that effect. And it shall be the duty of the directors of the state bank to ascertain, at the times of making their dividends, the amount due of the loan, on the part of the state, to such stockholder, and declare the dividend thereon accordingly; and the dividends accruing on the stock, or such portions of the stock as shall not be required to be paid to said board, shall be paid, on demand, to the holders thereof respectively, except in cases expressly provided by this charter.

SEC. 96. In case the amount of such dividend on individual stock so herein provided to be paid to the commissioners of the sinking fund shall not be sufficient to pay the interest due from the owner of such stock for the money so loaned to him by the state, then it shall be lawful for said commissioners to demand and receive of said bank a sufficient sum from the

dividends due on the residue of the stock of such owner, as will pay the balance of such interest.

Disc'ts &c. shall not be made to stockholders to pay instalment.

SEC. 97. It shall not be lawful for said bank or any branch to discount or receive any note or other evidence of debt in payment of any instalment due, or to become due on any shares of its stock, or with the intent of providing the means of making such payment, or to receive or discount any note or evidence of debt, with the intent of enabling any stockholder to withdraw any part of the money paid in by him on his stock: nor shall said bank or any branch make any loan of its specie, or discount or receive any note or other evidence of debt for the purpose of furnishing means for any new branch to organize, or to enable any subscriber for or holder of shares of the stock of any branch, to make payment of any instalment due thereon.

Loans, &c. shall not be made for the purpose of organizing any new branch.

Debts to or from b'k shall not exceed twice the capital paid in.

SEC. 98. It shall not be lawful for said bank and branches at any time to have a greater amount of debts due to said bank and branches, than twice the amount of the capital stock actually paid in; nor shall said bank and branches, owe or be indebted in a larger sum than twice the amount of its capital paid in, exclusive of sums due on deposits; nor shall any branch at any time have due or owing to it, or be indebted, exclusive of deposits, in a larger sum than twice the amount of its capital stock actually paid in, without express permission from the board of directors of the state bank: and such permission shall only be given in cases where one branch shall loan to another branch a part of its funds, to be used for a definite time, and such permission shall only extend to such period of time; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their individual and private capacities, in an action of debt against them, or any of them, in any court competent to try the same, by any of the creditors of said bank or the bank itself, and may be prosecuted to judgment and execution, any condition, covenant, or agreement to the contrary notwithstanding: but this shall not be construed to exempt the said bank, or the lands, tenements, goods, chattels, money, or effects of the same, from being also liable for, and chargeable with such excess. And any director or directors, who may be absent when such excess is created or contracted, or who may have dissented from the resolution or act, whereby the same was created or contracted, may respectively exonerate themselves from being so liable by causing or requesting, in writing, at the time, his or their dissent, to be entered on the minutes of the board, and by forthwith giving notice, of his or their absence or dissent, to the governor of the state, and to the stockholders by giving notice thereof in some newspaper published near said bank or branch.

Individual liability of directors in case of excess

Direct's, absent or dissenting may be exonerated from liability by giving notice.

Absent director failing to give notice, deemed concerned.

SEC. 99. Every director not present at the meeting when such excess shall be created or contracted, shall, nevertheless, be deemed to have been concerned therein, if the same shall appear on the books of the board, and he remain a director for six months thereafter, and does not within that time give notice of the same, as required in the preceding section.

SEC. 100. The insolvency of said bank or any branch shall be deemed fraudulent, unless its affairs shall appear, upon investigation, to have been fairly and legally administered, and generally with the same care and diligence that agents, receiving compensation for their services, are bound by law to observe; and it shall be incumbent on the directors and stockholders of the bank, or any branch, should the same become insolvent, to repel by proof the presumption of fraud. Insolv'cy. when deemed fraud'lt.

SEC. 101. In case of the fraudulent insolvency of said bank or any branch, the president and directors of said bank or branch respectively, by whose acts or omissions the insolvency was wholly, or in part occasioned, and whether then in office or not, shall each be liable, in the first instance, to the creditors and stockholders of the said bank or branch, or any or either of them, for his proportional share of their respective losses; the proportion to be ascertained by dividing the whole loss among the whole number of directors liable; and if any such president or director shall be unable, by reason of being insolvent, or for any other cause to pay his proportional part of such loss, then the residue of said loss shall be borne and paid in equal parts by the remaining directors liable as aforesaid, until the whole loss shall be reimbursed, or the whole property, rights, credits, and effects of each of said directors shall have been exhausted toward the payment of such loss; but this section shall not be construed to diminish the liability of directors as before declared. Presumption of fraud how repelled.

SEC. 102. If the moneys remaining due to the creditors of said bank or any branch whose insolvency shall be adjudged fraudulent, after distribution of its effects, and after the property, rights, credits, and effects of the president and directors of such insolvent bank or branch shall have been exhausted, shall not be paid by the stockholders, the deficiency shall be made good by the contributions of the stockholders of the branch becoming insolvent. The whole amount of the deficiency shall be assessed on the whole number of shares of the capital stock of said branch, and the sum necessary to be paid on each share shall then be ascertained, and each stockholder shall be liable for the sum assessed on the number of shares held by him not exceeding the nominal amount of such shares, in addition to the sums paid, or which he may be liable to pay, on account of these shares; but before such contributions shall be required, or assessment made, on any shares where the whole stock had been paid, the instalments unpaid on any shares shall be required to be paid up, and the estimate of the deficiency made accordingly. Liability of president and directors in case of fraudulent insolvency.

SEC. 103. For the purpose of providing funds on the part of the state to pay her subscription of stock in said bank and afford to her citizens, who may become stockholders therein, the ability of paying up their second and third instalments of stock, the commissioners of the canal fund are hereby authorized and directed to contract on the part of this state, a loan of one million three hundred thousand dollars, or so much thereof as shall be required for the purposes of this act, at a rate of Moneys due to creditors in case of insolvency how paid.

State shall contract a loan of \$1,300,000, for what purpose.

Faith of the
state pledged.
Bond of fund
com'rs.

interest not exceeding five per cent. per annum, redeemable after twenty and within thirty years, at the pleasure of the state, for the payment of which and the interest thereon, at such time and place as agreed upon, the faith of the state is hereby irrevocably pledged. Previously however, to said fund commissioners performing any duties by this section provided, they shall enter into bond with good security, in a penalty to be fixed by the treasurer of state, payable to the state of Indiana, conditioned well and truly to perform the trust reposed in them; and to pay over all moneys to the president and directors of the state bank of Indiana, which they may receive, on account of any contract or loans made by them, in behalf of the president and directors of the state bank of Indiana, which bond shall be approved by the treasurer of state, and when so approved it shall be his duty to cause it to be filed in the office of the secretary of state.

Loan drawn
by instalments.

SEC. 104. Said loan shall be so negotiated from time to time as to be drawn for by instalments as follows, not exceeding five hundred thousand dollars when the said bank shall be ready to receive the same for business, and the residue in two annual payments thereafter; such instalments to be varied in amount to suit the number of branches that shall organize under the provisions of this act.

Bonds for loan
to be issued by
com'r. &c.

SEC. 105. The said commissioners or a majority of them, shall have power to issue bonds for said loan executed by them payable to order or bearer, copies of which bonds shall be filed in the office of the secretary of state.

C. compensation

SEC. 106. Said commissioners shall receive the same per diem compensation for their services herein as now allowed them, also their expenses to be adjusted by the directors of the state bank.

C. report to the
gen'l assembly.

SEC. 107. Said fund commissioners shall make report to the general assembly fully of their proceedings herein; they shall keep a record of their proceedings; shall pay over the said loan on the order of the president and directors of the state bank, and take and preserve all proper drafts and vouchers therefor.

Amendments to
this charter,
how made.

SEC. 108. That it shall be lawful for the general assembly, by and with the consent of the president and directors of the state bank and of the president and directors of each branch, and not otherwise, to make such amendments and alterations in this charter as may be found expedient: *Provided*, that said bank or any of its branches, shall not be authorized by any such amendment to suspend or refuse the payment of specie for its notes, bills, or obligations; or for any moneys received upon deposit, and that no such amendment shall be made, the faith of the state is hereby pledged to the creditors of said bank and branches.

Power reserved
to the st. in rela-
tion to college,
funds, &c.

SEC. 109. The state reserves the power of making provision hereafter for the investment of the proceeds of the sales of the college lands, lands reserved for the use of township schools, and saline reservations, and such other corporate or state funds which may be deemed expedient, as stock in said

bank under such regulations as will secure the safety of the same, and make them more productive and guard the rights of those concerned.

SEC. 110. That the president and directors of the state bank, first elected by the state shall have power to organize themselves as a board of directors of the state bank, by taking the oath or affirmation and giving bond as herein required, and shall, when so organized, have power to open or cause to be opened the books of subscription and to locate and organize the branches herein authorized, to procure plates, and cause paper to be struck, and to do and perform all those things requisite and necessary to put the said branches in operation, any thing in the sixty-fourth section of this act, to the contrary notwithstanding.

Powers of the
pres't and di-
rectors of state
b'k, first elect'd
by the state.

SEC. 111. That it shall not be lawful for the said bank, after the first of January, eighteen hundred and fifty-seven to discount, loan money, or do any other banking business, and all the powers herein conferred shall cease, except those incidental and necessary to collect and close up its business. And, the general assembly hereby retains the power at any time after the said first of January, eighteen hundred and fifty-seven, to establish a new bank and branches, notwithstanding the privilege herein conferred.

Banking powers
to close in 1857.

Power reserved
to legislature.

SEC. 112. This act shall be taken and received in all courts, and by all judges and magistrates, and other persons as a public act: and all printed copies of the same, which shall be printed by or under the authority of the general assembly, shall be admitted as good evidence thereof, without any other proof whatever.

This declared a
public act.

SEC. 113. There shall be created a fund to be called the sinking fund, which shall consist of all unapplied balances of the loan or loans procured on the part of the state for its stock in the state bank, or for the purpose of being loaned to stockholders to enable them to meet their stock instalments in the bank; the semi-annual payments of interest on the state loans to stockholders, and the sums that shall be received in payment of said loans; the dividends that shall be declared and paid by the state bank on the state stock, and the dividends accruing on such portions of the stock belonging to the other stockholders as shall have been paid for by the loan on the part of the state, and which shall not have been repaid by such stockholders.

S. fund created.

SEC. 114. The principal and interest of said sinking fund shall be reserved and set apart for the purpose of liquidating and paying off the loan or loans and the interest thereon, that shall be negotiated on the part of the state for the payment of its stock in the state bank, and the second and third instalments on the shares of the other stockholders in said bank, and shall not be expended for any other purpose, until said loan or loans, and the interest thereon, and incidental expenses shall have been fully paid, and after the payment of said loan or loans, the interest and expenses, the residue of said fund shall be a permanent fund, and appropriated to the cause of common school

For what purpose
reserved.

education in such manner as the general assembly shall hereafter direct.

SEC. 115. The president and directors, on the part of the state, of the state bank, shall constitute a standing board of commissioners of the sinking fund, and the president of said bank shall be the president of said board, and the cashier of said bank shall be the clerk of said board. They shall have the superintendence and management of said fund under such powers and restrictions as are conferred or imposed by this act, or the legislature from time to time shall prescribe. It shall be the duty of said board to loan all moneys belonging to said fund, and examine the title to all real estate mortgaged to the state to secure the loans made by the state to the stockholders in the state bank, and the loans made by said board of moneys belonging to said fund; to ascertain and determine the value of such real estate; to take the necessary bonds and mortgages to secure the payment of any such loans and the interest thereon; to receive and collect the amount due of the principal or interest of any such loans; and in the examination of the title to real estate, fixing the value thereof and the amount for which it is to be mortgaged, the amount of the loan, its duration and rate of interest, the nature of the mortgage, the registering, cancelling, or foreclosing thereof and in the making and collecting any of said loans with the interest thereon, the said board shall be governed in all respects by the provisions of the several acts authorizing the loaning of the seminary funds, except on loans made by the state to *stockholders in the state bank*, the time for the payment of the *principal and interest* of said loans shall be regulated by this charter. The said board shall receive and collect from the state bank the semi-annual dividend that shall be declared on the state stock, and on such portions of the stock of other stockholders as shall have been paid for through the medium of the state loan, and which shall not have been repaid by such stockholders to said board.

SEC. 116. It shall be the duty of the said board to see that the interest is promptly paid on the state loan or loans made for the payment of its stock, or that of the other stockholders, in the state bank; and, for this purpose, they shall have the right to command the services of the president and directors of the state bank, free of charge, to pay the same; and it shall be the duty of said bank to pay said interest on said loan or loans, when required by said board, the said bank to be reimbursed, for the amount of interest thus paid, by said board, and all exchange and expenses actually incurred.

SEC. 117. Said board shall make all necessary arrangements for meeting any legal charges or requisitions on said fund, and pay and discharge the same in the manner prescribed by law. They shall keep in book, to be provided for that purpose, full accounts of all their acts and proceedings, and an account shall be kept shewing in detail the receipts, loans, and disbursements of said fund; separate books shall be kept, in which shall be entered the amount of the receipts of dividends on the state stock in the bank, and an account of each stock-

Board of com'rs.
their duty.

Their further du-
ty in paying in-
terest on s't lone.

An ac't. of acts
&c. of the board
shall be kept.

holder that is required to be paid to said board; and after the payment of the interest due on the loan of any such stockholder to the state, out of said dividends, or otherwise, the residue of such dividends shall be applied to the payment of his loan, and shall be credited on his bond and mortgage by said board; and when such bond and mortgage shall be satisfied by said dividends, or otherwise, the same shall be cancelled, and the bank dividends on the stock of such stockholders shall not be paid to said board, but to the owner of said stock.

SEC. 118. The said board shall annually report to the legislature, during the first week of its session, giving a full and detailed statement of the operations and situation of said fund.

SEC. 119. The president and commissioners of said board, the clerk and all its agents, shall each, before entering on their duties, take an oath or affirmation faithfully to discharge the duties assigned them, a certified copy of which shall be filed in the office of the treasurer of state. The said president, commissioners, and clerk shall severally give a bond to the state of Indiana, with such securities as shall be approved of by the governor, in the sum of fifty thousand dollars, conditioned for the faithful performance of the duties of their office, the amount of which bonds may be enlarged from time to time, or one or more additional bonds required, as the legislature may require, which bonds shall also be filed in the office of the treasurer of state.

SEC. 120. The said commissioners for each and every day they may be necessarily engaged in the discharge of the duties of their office, shall each be allowed two dollars per day; and they shall make such allowance for the services of their clerks and agents as shall be a fair and reasonable compensation therefor, which sums with the incidental expenses for stationary, &c. for said board, shall be paid out of said fund, and an account thereof be embraced in the annual report of said board. The legislature reserves the right of changing the amount of the compensation of any of the officers in this section mentioned other than that of the president.

SEC. 121. The board of commissioners of the sinking fund shall be authorized to employ, as agents, the directors on the part of the state, in any of the branches, for the purpose of making and securing any loan, or to collect the same or the interest thereon, or the dividends coming to said fund from any branch of which agents are directors, the said board being responsible for the acts of such agents.

SEC. 122. This act shall be in force from and after its passage.

B. make report
to legislature.

Oath and bond
of com'rs. &c.

Rights reserved
to legislature.

St. directors in
br's may be em-
ployed as agents
of board.

AN ACT amendatory of an act, entitled "an act establishing a State Bank," approved January 28, 1834.

[APPROVED JANUARY 25, 1836.]

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the president and directors of the state bank of Indiana, shall be authorized to increase the capital stock of any of the branches of said bank, by individual subscriptions, to an amount by which the capital of each shall not exceed two hundred and fifty thousand dollars. The additional capital to be made at such periods, and in such sums as the president and directors of the state bank shall deem best calculated to promote the interests of the state, and the welfare of the institution. The subscription and payment of such additional capital to be under the direction of the parent board, except that the state shall not be required to furnish any means for payment of such stock: *Provided however,* that the state may subscribe for and take one half of said additional capital on the same conditions as heretofore, except that the same shall be paid in, at the time the individual stock is paid for.

Sec. 2. That the president and directors of the state bank may from time to time authorize the several branches, or any of them, to extend their discounts to an amount, the average of which for each fiscal year shall not exceed two and a half times the capital stock actually paid in; and for this purpose, the debts due to them exclusive of deposits and cash balances in other banks and branches, may be extended to average as aforesaid, twice and one-half the amount of the capital actually paid in, but never shall exceed that proportion, and never shall exceed three times the amount of the capital actually paid in, at any one time; the power being still reserved by the state board of restricting the branches in their discounts to one and a quarter the amount of capital paid in: *Provided however,* that the state reserves the right of repealing or amending this section, at the session commencing in December, 1839, and also at the session commencing in December, 1845.

Sec. 3. That the president and directors of the state bank may empower any of the branches at their own expense, to open books for the transfer of their stock in any of the cities of the United States: and any such branch may authorize transfers of any portion of its stock, without lien or restriction, on which the state has no lien, on said books: which books shall be kept open for public inspection, conformably to the provisions of the 28th section of the act of which this is amendatory, and such transfers shall be regularly certified to the state bank according to the charter.

Sec. 4. It shall be lawful for the state bank and branches in the computation of interest or discount, to charge according to the standard and rate set forth in "Rowlet's tables;" and in computing the time which a note has run, to reckon the days inclusively.

Sec. 5. The directors on the part of the state in each branch, shall be appointed by the president and directors, on the part of the state, of the state bank.

Sec. 6. That the trustees of any congressional township, in this state, by their clerk on the last day of April or October in any year (or if such day be Sunday, then on the day previous) may subscribe for stock in any branch of the state bank, with the consent of said branch, which shall be so far a creation of additional capital in said branch, to be considered as part of the additional stock herein first provided for; and shall be rated at the same amount per share as the original shares, but the whole amount of the subscription shall be paid on subscribing; on which the dividend shall be semi-annually apportioned in common with the other capital; and to be payable to the treasurer of such township, and certificates of such stock shall be issued accordingly. The said stock to be put on the footing of state stock in every particular as to responsibility. The same not to be taxed: *Provided however,* it shall not be lawful for such trustees to subscribe for such stock, unless the majority of the voters, at any annual election for a trustee, shall by a majority of all the votes given at such election, determine that such stock be taken; which determination shall be evidenced by the voters writing on their tickets the words "bank stock."

Sec. 7. That any branch or branches shall be authorized to contract with such board or officers as the state may empower, for the receipt and disbursement of any deposits of public funds by the state, and for the interest to be paid thereon, subject to the approval of the board of directors of the state bank.

Sec. 8. It shall not be lawful for the bank or any branch thereof, to buy at a greater rate of discount than six per cent. per annum, any promissory note or inland bill of exchange, made by any person or persons, who as either principal or endorser, shall have within one month previously, offered any note or bill for discount, and which bill or note has been rejected or not discounted.

Sec. 9. That the counties of Elkhart and Kosciusko be included within the twelfth bank district of the state of Indiana.

Sec. 10. That the directors of the state bank are hereby authorized, should they deem it expedient, to locate the twelfth branch of the state bank on or before the first day of July next, at such place within said district as they may deem expedient; which said branch may be organized immediately thereafter, any thing contained in the third section of the bank charter to the contrary notwithstanding.

Sec. 11. Before any of the foregoing amendments shall have the effect of law, the consent of the branches and the state bank thereto, embracing all of said amendments, shall be given according to the provisions of the 108th section of the charter; evidence of which assent shall be filed by the state bank in the office of the secretary of state, and a record thereof shall be made in said office; and the same from such filing

shall be taken and considered as a part of the charter of said bank.

AN ACT supplemental to an act entitled "An act to amend the act entitled 'an act establishing a State Bank,' approved January, 1836, providing for a branch of the State Bank, east of the Lafayette branch, and west of the Fort Wayne branch.

[APPROVED, FEBRUARY 8, 1836.]

Additional branch to be located.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it is hereby made the duty of the president and directors of the state bank, to locate one additional branch of said bank, to be numbered and designated as the thirteenth branch, within the district of country composed of the counties of Cass, Miami and Fulton, as they may deem expedient; the said branch to be located at some point east of the Lafayette branch, and west of the Fort Wayne branch; and like proceedings shall be had in organizing said branch as are by law prescribed and required for organizing the other branches of said state bank, and the state stock therein, shall be obtained in the same manner and paid over under the same restrictions and regulations as are provided for the other branches; which said branch shall have, possess and enjoy all the same rights and privileges; and be subject to the same liabilities and restrictions as are granted and imposed upon the other branches of said bank.

When to be in force.

SEC. 2. This act shall be in force so soon as the consent of the president and directors of the state bank and of each of the branches shall be obtained, and evidence thereof filed in the office of the secretary of state, in the manner contemplated in the act to which this is a supplement.*

CHAPTER XII.

AN ACT making Promissory Notes, Bonds, and Inland Bills of Exchange, negotiable and assignable.

[APPROVED JANUARY 29, 1818.]

What notes, bills, bonds, &c. are assignable.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That all notes, bills, bonds, or other instruments of writing, that shall hereafter be made, or have heretofore been made and signed by any person or persons, body politic or corporate, whereby such person or persons, body politic or corporate, promise to pay any sum of money, or acknowledge any sum of money to be due to any other person or persons, or for the delivery or payment of any specific article, or to convey any property, or perform any condition or conditions therein

* Additional branches to be located—see surplus revenue.

mentioned, shall be, and the same are hereby made assignable by endorsement thereon, under the hand or hands of such person or persons, body politic or corporate, to whom the same shall have or may be made due or payable; and in his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and such assignee or assignees may bring suit thereon in his, her or their own name or names, and recover against the person or persons, body politic or corporate, who have or shall make or sign the same, reserving to such drawer or drawers, obligor or obligors, all the equitable defence which he, she or they might or could make, and in the same manner as if the suit had been commenced by and in the name or names of the drawee or drawees, obligee or obligees; and such assignee or assignees may have their action or suit against him, her or them, who endorsed the same; (having used due diligence to obtain the money, article, property or condition from the maker or drawer thereof,) and in every such case, he, she or they so bringing suit, shall be entitled to recover damages and costs, if judgment be rendered in his, her, or their favor: *Provided however*, That all such assignee or assignees shall allow all just set-offs, discounts and defence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant: *Provided also*, That all notes in writing negotiable and payable at any chartered bank within this state, made and assigned by any person or persons, body politic or corporate, whereby any such person or persons, body politic or corporate, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof, be taken and construed to be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or endorsees of every such note, payable to them or their order, shall and may maintain their action for such sum of money against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange: *And provided also*, That nothing in this preceding proviso shall be so construed as to affect any promissory note, or other writing, unless the same shall be made negotiable and payable in the first instance, at some chartered bank in this state.

How assigned.

Assignee may sue in his own name.

Action vs. endorser.

Assignee to allow set off before notice to drawer, &c.

Notes payable at a chartered bank, negotiable in like manner as inland bills of exchange.

Proviso.

CHAPTER XIII.

AN ACT regulating damages on protested Bills of Exchange.

[APPROVED FEBRUARY 17, 1838.]

Whereas bills of exchange are accounted in all mercantile transactions as ready money, and it is expedient for the advance-

Preamble.

ment of trade and commerce, that the credit of such bills should be preserved by making the same a sufficient security to the holder, and expedite a recovery thereupon, therefore:

Drawer or endorser of bills of exchange, subject to 10 per cent. damages, if drawn on persons out of the U. States.

Bills to bear interest.

Proviso.

Proviso.

Be it enacted by the General Assembly of the State of Indiana, That when any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance, or non-payment, the drawer or endorser shall be subject to the payment of ten per cent. damages thereon, if drawn on any person or persons living without the jurisdiction of the United States; and five per cent. damages thereon, if drawn on any person or persons residing within the jurisdiction of the United States, and without the jurisdiction of this state; and the bill shall in all cases bear an interest of six per centum per annum from the date of the protest for non-payment, until the money therein drawn for shall be fully satisfied and paid: *Provided,* Nothing herein contained shall be so construed as to entitle any banking company, to any more or greater interest, than at the rate of six per centum per annum on any note which may have been discounted by such bank, and which may afterwards have been protested for non-payment: *Provided also,* That nothing in this act shall be so construed as to subject the drawer or endorser of a bill of exchange to any other damages than the costs of protest for non-acceptance, if the bill of exchange be paid by the drawer when the bill arrives at maturity.

CHAPTER XIV.

AN ACT authorizing the seizure of Boats and other Vessels for Debt.

[APPROVED FEBRUARY 17, 1838.]

Sec. 1. Be it enacted by the General Assembly of the state of Indiana, That boats and vessels of all descriptions built, repaired, or equipped within the jurisdiction of this state, and all boats and other vessels built, repaired or equipped by citizens of this state without the jurisdiction thereof, shall afterwards come within such jurisdiction, shall be liable for all debts contracted by the master, owner, or consignee thereof, on account of work done, supplies, or materials furnished by tradesmen, mechanics, or others, for or on account of, or towards the building, repairing, fitting, furnishing, or equipping such boats or vessels; and the debts so contracted shall be a lien on such boats or vessels, their tackle, apparel, and furniture; and shall have preference to any and all other debts due from the owners, masters, or assignees thereof as aforesaid, except mariners' and boatmen's wages.

Sec. 2. That any person having a demand contracted as before mentioned, against any such boat or vessel, may have a

warrant, to be issued by any justice of the peace, judge or court, having jurisdiction within the county in which such boat or vessel may be, authorizing and directing the seizure and detention of the same, the tackle and apparel, by the sheriff or constable, upon affidavit made of the truth and justice of the demand, to be left with the officer or court issuing such warrant, and such attachment, if the demand be within the jurisdiction of a justice, shall be returnable to the justice who issued it, otherwise the same shall be returnable to the circuit court of the county.

SEC. 3. That upon the return of such warrant, all persons having demands, of the description before mentioned, may join in a declaration against such boat or vessel, briefly setting forth their demands for work done or materials furnished, and whether at the request of the master, owner or consignee of such boat or vessel, and averring demand and refusal of payment, to which declaration shall be annexed the particulars of the demands, and proceedings shall be had, and judgment rendered as in other cases; and if in any case, all the demands exhibited before any justice of the peace, before judgment rendered by him, upon any such warrant, issued by and returned before him, shall exceed the extent of his jurisdiction, he shall certify the proceedings to the circuit court of his county, where the same proceedings shall be had thereon, as if originally returned into said court.

SEC. 4. That boatmen and mariners for their wages, may proceed under the provisions of this act, and shall be entitled to all the benefits thereof.

SEC. 5. That if the master, owner or consignee, shall before final judgment, give bond with security, to be approved of by the clerk, justice or judge who may have issued such warrant, under which any boat or vessel may be seized or detained as aforesaid, conditioned to satisfy and pay all the demands pending against the same, which shall be adjudged to be due and owing, on the determination thereof, or pay the said demands together with the costs of the proceedings, such boat or vessel shall thereupon be discharged from such arrest and detention.

SEC. 6. That whenever any steam boat or other vessel having on board freight to be delivered at any landing place in this state shall attempt to pass the place of delivery without delivering the same, the owners or consignees may sue out an attachment against said steam boat or other vessel, and compel the delivery of said freight, or in case of passing said port of destination in the night, and failing to give notice to said owners or consignees, to receive said freight and waiting a reasonable time for the delivery of the same, it shall be taken to be debt against said boat, her captain and owners, and be placed upon the same footing with the debts in the first section of this act, and the value of said freight at the place of delivery and reasonable damages to the owner or owners, may be recovered as hereinbefore provided.

AN ACT in amendment of the act approved January 22d, 1824, entitled "an act authorizing the seizure of boats and other vessels for debt," and the act in amendment of the same, approved February 1st, 1834.

[APPROVED FEBRUARY 7, 1835.]

Materials for repairs &c. sold after a boat shall have started on her voyage, remedy for.

Process, what shall be service of.

Liability for obstructing &c. service of process.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That after a boat or vessel of any description shall have started on her voyage, and any person shall sell to the captain, commandant, master, consignee, or any officer of said boat or vessel, materials for her repair or equipment, or wood or coal for fuel, or provisions to be made use of by the crew or passengers, during said voyage, or any articles not being freight, or cargo, and which is designed merely to enable said boat or vessel to prosecute her voyage from port to port, said person making affidavit of the truth and justice of the demand, shall have the same remedy and obtain judgment in the same manner as is provided for by the act entitled "an act authorizing the seizure of boats and other vessels for debts, approved January 22d, 1824," and the act in amendment of the same, approved February 1st, 1834.

SEC. 2. It shall not be necessary to serve the process upon the officer or consignee with whom the contract was made, in order to obtain judgment, in cases arising under this act, or the acts of which this is an amendment, if due diligence has been used by the officer having the process, to do the same without being able to effect it, but in such case service upon the clerk, or any other officer of said boat, if said clerk cannot be found, or in case that cannot be done, service by a copy left or affixed in some place in said boat or vessel, easy to be seen, shall be sufficient service to authorize judgment.

SEC. 3. Should any person prevent, resist or obstruct the execution of process contemplated by the provisions of this act or the acts to which this is an amendment, or shall prevent, obstruct, or resist any process which may be served or attempted to be served upon any boat, vessel, or water craft, or any officer or persons who may be aboard such boat, vessel, or water craft, or suffer or permit it to be done in any way when it is in the power of said person to prevent it, said person shall be liable in an action of debt to any person who will sue for the same in one year afterwards, which action may be brought before any justice of the peace in any township and county in the state, where the person or persons so offending may be found, and said person who shall thus sue shall not recover less, if judgment be obtained in his favor, if he sue before a justice of the peace, than ten dollars, nor more than one hundred dollars; and if he sue in the circuit court, not less than ten nor more than five hundred dollars, together with costs of suit.

CHAPTER XV.

AN ACT requiring certain public officers to give additional security.

[APPROVED FEBRUARY 2, 1832.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever the security or securities of any of the clerks of the circuit courts, sheriffs, coroners, justices of the peace, school commissioners, county agents, seminary trustees, or any other county or township officers, who have been heretofore, or who may hereafter be required by law to give bond with security, for the performance of any official duty, shall remove without the state, become insolvent or insufficient; or if such officers, when required by law, have omitted or may hereafter omit, to give bond and security, before entering on the duties of their respective offices, it shall be the duty of the circuit court, or board doing county business, upon petition signed by three or more respectable citizens of the proper county; setting forth such removal, insolvency, or omission to give bond and security, to summon any such officers to appear before the court issuing the same, to show cause, if any they can show, why they shall not give additional bond and security; or where no security has been given, why they have entered upon the duties of their office, without giving security as is required by law.

Citation for failure to give bond or additional security.

SEC. 2. If upon the hearing of the case, the court shall be of opinion, that such security or securities have not removed, become insolvent or insufficient, it shall dismiss the same at the cost of the petitioners, but if it shall be the opinion of the court, that such security or securities have removed without the state, become insolvent or are insufficient to discharge the bond, which he or they may have entered into, as such security or securities, or where any such officer has omitted to give security, it shall be the duty of the said court, to require such other or further security, as they may deem necessary; and the bond or bonds required by this act, shall be similar in every respect, to the bonds required by any such officer, before entering upon his official duties in the first instance: *Provided however*, that in no case shall the original bond or securities be discharged or affected, where additional bond and security is given under the provisions of this act.

Proceedings to enforce security.

SEC. 3. Should any officer refuse to comply with the order of the circuit court, or board doing county business, he shall be subject to attachment and all other process for contempt, for disobeying such order.

Attachment for failing to comply.

CHAPTER XVI.

AN ACT for the protection of Bridges.

[APPROVED FEBRUARY 17, 1838.]

Penalty for travelling faster than a walk across a bridge.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever hereafter any person or persons shall travel a horse or horses, work oxen, cattle, mule, ass, or any beast of burthen on or across any bridge in this state upon any public highway, the span of which shall be twenty feet or more, faster than a common walk, such person or persons shall be liable to pay any sum not less than three nor more than twenty dollars for every such offence, to be recovered by an action of trespass on the case by any person resident in the county in which such bridge may be situated, who feels himself aggrieved thereby before any justice of the peace in such county; and it shall be the duty of such justice of the peace to pay over such moneys so collected to the proper supervisor of roads in the township or district in which such bridge may be situated, whose duty it shall be to lay out and expend the same upon such bridge or any part of said road on which such bridge may be situated, which may require repairs.

Supervisor shall post up notice.

SEC. 2. It shall be the duty of the proper supervisor of roads in the township or district in which such bridge may be situated, to cause a printed or written copy of the first section of this act, to be posted up in some conspicuous place on said road.

This act to take effect and be in force from and after its passage.

CHAPTER XVII.

AN ACT for the protection of the Canals belonging to the State, the collection of tolls thereon, and for other purposes.

[APPROVED FEBRUARY 19, 1838.]

Penalty for wilful injury to public works.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That if any person or persons shall wilfully and maliciously break, throw down, injure, or destroy any embankment, waste weir, lock, aqueduct, culvert, lock gate, or bridge, on any canal owned by the state, such person or persons, for every such offence, shall upon conviction thereof, by presentment or indictment before the proper tribunal, be sentenced to imprisonment at hard labor in the state prison, for any length of time, not less than six months, nor more than two years; and shall further be held liable to pay all damages, sustained by the state, in consequence of such offence.

SEC. 2. That if any person or persons shall wantonly or unnecessarily, open or shut, or cause to be opened or shut, any lock gate, or any paddle gate, or culvert gate thereof, or any waste gate, or drive any spike, nail, pin, or wedge, into either of said gates, or shall in any manner interfere with the free use of said gates, such person or persons for every such offence, shall forfeit and pay to the state one hundred dollars, together with all damages consequent upon such offence, recoverable by action of debt, in the name of the state of Indiana, before any court having competent jurisdiction thereof.

SEC. 3. That every person who shall lead, ride, or drive, or cause to be led, rode, or drove, any horse, ox, or other animal, drawing after it any wagon, cart, dray, or other carriage, upon the towing path or berm bank of any of the canals of this state, shall for every such offence forfeit and pay to the state the sum of fifteen dollars, recoverable by action of debt as aforesaid.

SEC. 4. That if any person shall obstruct the navigation of any of the canals of this state, by sinking therein any stone, timber, vessel, or other thing, or by placing any obstruction on the towing path thereof, such person for every such offence, upon conviction thereof, shall forfeit and pay to the state, the sum of twenty-five dollars, together with the expense of removing such obstruction, recoverable by action of debt as aforesaid.

SEC. 5. That if any boat or other float shall be so moored, on any of the canals, as to obstruct the navigation thereof, or if any person or persons shall obstruct the passage of boats on any canal, by improperly stopping, loading, unloading, or otherwise misconducting any boat or other craft, and shall refuse or neglect to remove such obstruction immediately on being required to do so, by any officer on the canal, or by any person incommoded by such obstruction, the boatman or person who caused the obstruction, shall forfeit and pay to the state, the sum of twenty-five dollars, recoverable by action of debt as aforesaid.

SEC. 6. That no person shall construct any wharf, basin or watering place, on any canal of this state, or make any device or arrangement, which will draw therefrom any water, without first obtaining the consent in writing of the acting commissioner or principal engineer of such canal; and if any person shall violate this provision, by commencing the construction of any such device without permission as before provided, or shall refuse to follow the directions of the acting commissioner or engineer, which may be given in regard to the location, size, and form of such wharf, basin, watering place, or other device as aforesaid, such person for every such offence, shall forfeit and pay to the state, the sum of fifty dollars, recoverable by action of debt as aforesaid; and the said acting commissioner or engineer, or any superintendent, or agent of the state, is hereby authorized to remove and destroy every such wharf, watering place, or other such device as aforesaid, at the expense of the person or persons thus attempting without permission to build it.

SEC. 7. That any individual may build a bridge across any canal of this state: *Provided*, the centre span of such bridge

Bridges across
canals, how
built.

shall conform to the following specifications, to-wit: the underside of the bridge timbers shall be at least ten feet above the top water line of the canal, when the water is at its greatest height, and the string pieces shall be twelve inches deep at the ends, and twenty inches deep in the centre, to prevent them from sagging down toward the canal. The trussell or abutment which stands in the canal, shall be so placed as to leave thirty-one feet clear width for the passage of boats between said trussell or abutment and the towing path of the canal, measuring at the level of four feet above the bottom of canal: The trussell or abutment which stands on the towing path shall be so placed as to have six feet clear space between said trussell or abutment, and the edge of the water when the canal is full, for a towing path; which towing path shall be excavated down to the level of six inches above top water line, so as to allow the horse and driver to pass under the bridge; and from the end of said trussell or abutment, the towing path shall be sloped at the rate of one to six, to the height of the adjoining tow-path; and to prevent the towing path from being undermined and rendered impassable by the action of the water route, a wharf shall be constructed in front, formed of two sticks of timber forty feet long, secured by square ties, the measurements and levelling herein required, to be made by the engineer having charge of the line, who shall attend to this duty whenever requested to do so by any individual, and if any person shall commence the construction of any bridge, which does not conform in every respect to the specifications herein given, such person shall upon conviction thereof, before any court having competent jurisdiction, forfeit and pay to the state the sum of fifty dollars, recoverable by action of debt in the name of the state.

Penalty for not
conforming to
specifications.

Kind of boat au-
thorized to navi-
gate canals.

SEC. 8. That no boat or float, unless it have a firm and permanent bow, at least as sharp or acute as a semi-circle, shall navigate or float on any canal of this state; and every time any boat or other float without such bow, shall move one mile or any greater distance, along any of the canals of this state, shall be considered a distinct offence.

Spikes, bolts,
&c. in boats pro-
hibited.

SEC. 9. That it shall not be lawful for any boat, having any spike, bolt, nail, hook or any plank, board or pin projecting from the side, end or bottom thereof, in such manner as to be liable to injure any other boat or towing line thereof in any work or mechanical structure belonging to the canal, to navigate any of the canals of this state.

Boats to have
guard plates,
&c.

SEC. 10. That every boat running upon any canal of this state, shall have a guard or plate of iron or some other permanent device, firmly attached so as to cover and secure the opening between the keel or stern post and the rudder, thereby effectually preventing the tow line of any other boat from entering said opening.

Bow line requi-
red.

SEC. 11. That no boat be permitted to navigate any of the canals of this state, without a good and sufficient bow line, which shall be approved of by the engineer or superintendent.

SEC. 12. That it shall not be lawful for any setting pole or

shaft, pointed with iron, steel, or other metal, to be used in the navigation or management of any boat or other float on any of the canals in this state. Pointed setting
poles prohibi-
ted.

SEC. 13. No float shall move on any of the canals of this state with a velocity exceeding four miles per hour. Velocity of
floats, &c.

SEC. 14. When a boat or other float shall be overtaken by another boat, it shall be the duty of the master or manager of the former, to turn from the towing path and afford to the latter every possible facility for passing, and to stop, if it should become necessary, until the boat or float last mentioned shall have passed by. How floats shall
pass each other.

SEC. 15. When any boat or other float, in passing on either of the canals, shall meet any other float, passing in an opposite direction, it shall be the duty of the master of each, to turn to the right hand, so as to be wholly on the right side of the centre of the canal; and the horses or other moving powers of the boat, which in turning to the right as aforesaid, shall turn from the towing path shall be stopped, so as to allow the moving power of the other, and the float itself to pass freely over the towing rope of the float so turned from the towing path. Same.

SEC. 16. Any float moving on either of the canals, which shall have arrived within one hundred yards of any lock, in which the water is on the same level with such float, shall be permitted to pass such lock, before any float not on the same level. How to pass
lock.

SEC. 17. No person shall attempt to pass any float into any lock, or out of any lock, until the main gates at the head or foot of said lock, as the case may be, between which gates such float shall be about to pass, shall first be entirely opened into their respective recesses, nor until all paddle and culvert gates of such lock shall be closed. Same.

SEC. 18. Neither of the main gates at the head or at the foot of any lock, shall be closed or allowed to close of their own accord, while either of the paddle or culvert gates at the opposite end of said lock shall remain open. Same.

SEC. 19. When any float shall pass out of any lock, the main gates of such lock, through or between which such float shall have passed out, shall be entirely open and completely within their respective recesses; and all the paddle and culvert gates of such lock, shall be left closed: *Provided however*, that where the acting commissioner, engineer, or superintendent having charge of that part of the canal, in which such lock is situated, shall direct any paddle, culvert or other gate to be left open for the purpose of passing water through the same, such direction shall be complied with and obeyed by all the lock-keepers, masters of floats, boatmen, and all other persons concerned in navigating such canal. Same.

SEC. 20. That in no case shall the stern or bow of any boat or float, approaching or being about to enter, or having entered any lock, be permitted to run against, or strike the head walls or either of the gates of such lock wilfully or negligently. Same.

Same.

SEC. 21. No lock gate, culvert gate, or paddle gate, shall be closed, nor be permitted by any person using the lock to close itself with such violence as to injure or be liable to injure itself.

Penalty for violating regulations as to locks.

SEC. 22. Every master or owner of any boat or other float, or any other person having charge of such float, who shall violate either of the provisions contained in the fourteen sections next preceding this section, or who shall permit any boatman or other person assisting in the navigation or management of such float, to violate either of the said sections, or any provisions thereof, shall for every such violation forfeit and pay a sum not less than five or more than twenty dollars, recoverable by action of debt in the name of the state of Indiana, before any court having competent jurisdiction.

Penalty, a lien upon the float.

SEC. 23. Every penalty and forfeiture imposed by this act for which any master, owner, boatman or other person may be liable, and which is herein made recoverable by action of debt in the name of the state, shall be chargeable on such boat or float, and when any suit shall be instituted for any such forfeiture, the officer issuing such process may cause such boat or float, together [with] the horses and furniture belonging thereto, to be attached and detained.

Penalty for wilful obstructions of canal.

SEC. 24. Any person who shall wilfully throw into either of the canals any saw-log, or other timber or other thing, which may obstruct the navigation, shall on conviction thereof, forfeit the sum of ten dollars, recoverable by action of debt in the name of the state. And it shall be the duty of every engineer, collector, superintendent or agent employed on either of the canals, to seize all logs, fire-wood or other thing, which may be found floating loosely, and all rafts which may be found improperly moored, so as to intercept the navigation, and to hold the same to satisfy the penalty for the aforesaid offence.

Penalty for injuring mechanical structures.

SEC. 25. If any person in navigating, or assisting in the management of any boat or other float, on either of the canals, shall either through design or negligence, in the navigation thereof, injure any lock, lock gate, waste gate, guard gate, aqueduct, bridge or other mechanical structure, shall forfeit and pay upon conviction thereof, any sum not less than five nor more than twenty dollars, and moreover be liable for all damages caused by such mismanagement or negligence, recoverable by action of debt in the name of the state.

Toll rates, how established.

SEC. 26. The board of internal improvement, are hereby authorized and empowered to establish such rates of toll as they may deem reasonable and most consistent with the public interest, to be collected on the several canals belonging to the state, and to make such changes and amendments in said rates, from time to time as the public good may seem to require.

Collectors of tolls, and their duties.

SEC. 27. The board of internal improvement shall appoint as many collectors of tolls on the several canals, and at such points on the same as they may deem necessary to secure the faithful and punctual collection of tolls with the least possible expense to the state; and the said board are hereby fully authorized to adopt such rules and regulations for the government of the collectors, in the performance of their duties, as may be

necessary to carry out the objects herein contemplated; and the board shall allow to each collector such annual salary for their services as they may deem reasonable in each case, with reference to the portion of his time required for the performance of the duties.

SEC. 28. The collectors of tolls previous to entering upon their duties, shall each enter into bonds to the state of Indiana, in such sums respectively as the board of internal improvement may require, and with such securities as they may approve, for the faithful performance of their duties, and for the faithful accounting for all monies belonging to the state that may come into their hands, either as tolls, water rents, fines or otherwise.

Collectors to give bond.

SEC. 29. Collectors shall be appointed for the term of three years, and shall be subject to removal by the acting commissioner on the line, at any time, for malfeasance in office, or for neglect of duty; and in case of such removal, the acting commissioner shall have power to appoint a successor for the time being, who shall hold his office until the next meeting of the board, unless removed under the provisions herein contained.

Their term of office, &c.

SEC. 30. It shall be the duty of each collector of tolls on the canals, carefully to inspect the cargo of every boat or other float applying for a clearance, and to ascertain the weight in amount of the cargo, by examining the bills of lading or otherwise; and also to ascertain the number of passengers; and after receiving the amount of tolls due the state on such cargo, the collector shall furnish the master of such float with a clearance, and it shall be the duty of each collector to examine the cargo and the clearance, as may be practicable, of every boat passing his office, to see that the bills required by the rates established have been paid the state, and to be vigilant in observing well and enforcing such rules and regulations in regard to the navigation and protection of the canal, and the collection of tolls, as may from time to time be established by law; or by the order of the board of internal improvement.

Collectors to inspect cargoes, grant clearances &c.

SEC. 31. The owner or owners of every boat navigating either of the canals, shall make out, sign and deliver to one of the collectors, a certificate to be entitled a certificate of registry, containing the name of the owner or owners with his place of abode, together with the name of the boat, and the town or place where it is owned, which certificates of registry shall be recorded by the collector in a book kept for that purpose, and said collector shall also furnish to each of the other collectors, on said canal, a copy of the registry of each boat registered in his office, which registry shall be copied by the collectors to whom it is sent in the registry books belonging to their office. And if the name of any boat be changed, the owner or master thereof shall apprise the collector of whom he may ask a clearance, of the change, and such collector shall forthwith inform each collector on the canal of such change.

Certificates of registry of boat.

SEC. 32. No clearance shall be granted to any boat, by any collector, unless the name of such boat, and the name of the owner, with the place where such boat is owned, be found in the registry book of such collector.

Name of boat & owner to be reg.

Changes of names to be reg. SEC. 33. Any owner or master of a boat, who shall change the name of his boat, without the written consent of the collector, or who shall enter or report such boat, at any collector's office, by a different name from that of the collector's books of registry, shall, for every such offence, forfeit and pay to the state the sum of twenty-five dollars, to be recovered before any court having competent jurisdiction, by an action of debt.

Name of boat to be painted on it. SEC. 34. No boat shall receive a clearance, or be permitted to pass on the canals, unless the proper name of the boat be painted on it in some conspicuous place, in letters of at least four inches in height.

Where clearances shall be granted. SEC. 35. Clearances for every voyage shall be required of, and issued by, the collector, whose office shall be nearest the place in the direction in which the boat is proceeding, where the voyage is commenced.

Masters shall exhibit clearances. SEC. 36. Every master of a boat shall be required to exhibit his clearance to any collector, engineer, superintendent, or lock tender, whenever they demand it, and no boat shall be permitted to pass on the canal without such clearance, signed by the collector.

Bills of lading & penalties for not delivering. SEC. 37. Every master of a boat, or other float, navigating either of the canals, who shall omit to exhibit or deliver a true bill of lading to any collector, or to pay the tolls thereon when required, or shall deliver any article mentioned in a bill of lading, at a place beyond that to which such article shall have been cleared, shall forfeit and pay to the state a sum not less than ten, nor more than one hundred dollars, recoverable by an action of debt before any court of competent jurisdiction.

False bills of lading. SEC. 38. Every person who shall sign or deliver to any collector, a false bill of lading, shall pay on all property omitted in such false bill, treble the established rates of toll, chargeable thereon, to any collector who shall be satisfied of such omission, for the whole distance such property is conveyed on the canal, recoverable by action of debt, in the name of the state, before any court having competent jurisdiction.

Same. SEC. 39. Every person who shall knowingly sign or deliver a false bill of lading, shall, upon conviction thereof, by presentment or indictment, before any court of competent jurisdiction, pay a sum not less than one hundred, nor more than five hundred dollars.

Bills of lading to be sworn to. SEC. 40. Every collector receiving a bill of lading may require the master exhibiting it, to verify it by his oath, which oath such collector is authorized to administer.

Separate clearances. SEC. 41. Each boat navigating the canals shall have a separate clearance, and no part of the cargo of any boat shall be cleared to a place beyond that to which the boat is cleared.

Tonnage. SEC. 42. The tonnage of all articles transported on either of the canals, on which toll may be charged by the ton, shall be ascertained and charged according to the real weight of such articles, reckoning two thousand pounds net to make a ton.

Master liable for tolls. SEC. 43. The master of every boat or float shall be liable for the payment of tolls and expenses, chargeable on such boat

or float, and its cargo; and it shall be the duty of every collector, to detain all articles on which tolls or expenses are chargeable, and the boat or float containing them, until such tolls and expenses shall be paid.

List of passen'rs SEC. 44. Every master of a boat, shall make out and certify a correct list, for every voyage, of all passengers over twelve years of age, which are transported on board of such boat, for any distance during such voyage, stating therein the name of each passenger, and the distance such passenger is transported, and deliver said list to the collector to whom the clearance of the boat for such voyage is to be delivered.

Permit, how granted. SEC. 45. Each collector is authorized, when the business on the intermediate portion of the canal, between his office and the next office in either direction, shall, in his opinion, require it in order to prevent frauds upon the revenue, to issue and sign a permit to the master of any float, to make a voyage or voyages, on such intermediate portion of the canal, with such regulations as will secure the payment of the proper tolls; which permit shall answer the purpose of a clearance, and shall authorize the boat or float, in whose favor it is given, to navigate such intermediate portion of the canal: *Provided*, such permit shall not extend to, nor within two miles of any collector's office.

Boats navigat'g without auth'y. SEC. 46. That in any case where a boat or other float shall attempt to navigate either of the canals, without being legally authorized so to do, it shall be the duty of every superintendent, lock-tender, or other agent of the state, belonging to the canal, on being notified thereof, to stop and detain such boat or float, until such legal authority to navigate the canal shall be obtained.

Authority to navigate, how ascertained. SEC. 47. That for the purpose of ascertaining whether any boat found navigating any canal of this state, has authority so to do, it shall be the duty of the master thereof to exhibit his clearance or permit, to any superintendent, lock-tender, or other agent of the state, when required to do so; and if such clearance or permit shall not be exhibited, such superintendent, lock-tender or other agent of the state, shall stop such boat from proceeding further on the canal, until the requisite authority be procured.

Account of tolls, and how and when paid over by collector. SEC. 48. Each collector of tolls shall keep a regular account of the weight or quantity of any and all articles cleared from his office, or passing on the canal, together with the tolls received thereon; and shall furnish the board of internal improvement and auditor of state, quarter annual abstracts of such accounts from his books, and at the same time pay over the amount of money received for toll, to the fund commissioners.

U. S. property, toll free. SEC. 49. All boats, floats, or other property belonging to the United States, shall be permitted to be transported free of toll, on so much of the Wabash and Erie canal as lies between the east line of the state, and the Western termination of the grant of land made by the United States, in aid of said canal, as said point of termination may be finally agreed upon, and established between the United States and the state of Indiana: *Provided*, satisfactory proof be furnished the proper collector, that the same is *bona fide* the property of the United States;

but all such boats, floats, or other property, shall be reported, cleared, and in all respects subject to the rules, regulations, forfeitures, and liabilities imposed by the laws of this state in respect to other property.

Penalty, &c.
how collected,
& how p'd over.

SEC. 50. That for all damages done to any canal, and for all penalties and forfeitures imposed by this act, other than for offences, punishable by presentment or indictment, any acting commissioner, engineer, superintendent, or collector of tolls, is authorized to bring suit, by action of debt, against the offender or offenders, in the name of the state of Indiana, before any court of competent jurisdiction; and the amount recovered over and above the expense of suit, shall be paid to the nearest collector of tolls, which shall be, by him, paid over to the fund commissioners, for the benefit of the internal improvement fund.

Additional rules
how made.

SEC. 51. That the board of internal improvement shall from time to time, make such additional rules and regulations, not inconsistent with the constitution and laws of the state, in respect to the protection and navigation of the canals, and the collection of tolls thereon, as they may deem necessary to guard and promote the interests of the state.

Land, how taken by the state for hydraulic purposes.

SEC. 52. At any lock, dam, or other point, on any canal of this state, which has been, or which may hereafter be located, where there will be surplus water, applicable to hydraulic purposes, and where the interests of the state and the public convenience may, in the opinion of the board of internal improvement, require the application of such water power to machinery, it shall be the duty of the board of internal improvement, or any member thereof, having charge of such canal, so soon as the same is permanently located, to ascertain the particular portion of ground required for the use of such water power at each point, whereupon the board, or any member thereof, shall, in behalf of the state, propose to the owner or owners of such ground, or their agent, to purchase the same for the use of the state, at such price as the board may deem reasonable, estimating the ground at its full value for ordinary uses, independent of any additional value which may be given to it by the use of the water power on it, and without considering the benefits conferred by the canal upon other property, as an offset to the value of the lot in question; and if the owner or owners shall refuse to sell such ground to the state upon fair terms, the board of internal improvement shall thereupon proceed to appropriate such lot of ground to the state, for the use of the public as aforesaid, and in that event, the value of said lot of ground shall be determined by three disinterested appraisers, appointed by said board, subject, however, to the appeal of either party from the award of such appraisers to the circuit court, in the manner prescribed by the 17th section of "an act to provide for a general system of internal improvement," approved January 27, 1836; and the payment of the award thus made by the board of internal improvement, shall vest in the state of Indiana, the title to said lot of ground for the purposes aforesaid, and in case the person entitled to said payment, will not receive the same it shall be deposited in the clerk's office

of the county in which the land lies, subject to his order, which shall be deemed a payment.

SEC. 53. That in case where the line of any canal or rail road, as permanently located, may cross any state or county road, and again cross the same within a short distance of the same point, requiring the construction of two bridges; or where the route of any canal or rail road, for any distance, occupies any state or county road, it shall be lawful for the board of internal improvement, or any member thereof, having charge of such line of canal, to alter the route of such state or county road, so as to place it wholly on one side of such canal, keeping the public convenience and economy in view.

SEC. 54. That in all cases where a state or county road same. crosses the line of any canal or rail road, where there is a high embankment, making a bridge or crossing place, expensive to the state, as well as inconvenient to the public, the board of internal improvement, or any member thereof, is authorized to make changes in the route of such state or county road, if in their opinion, economy and the public convenience require such change: *Provided*, that no public highway established by law, shall, in any case, be obstructed, until the new road, which is intended as a substitute, shall be opened and made passable.

SEC. 55. That where two existing state or county roads same. shall cross the route of any canal, as permanently located, near the same point, and where the location of such roads, or either of them, may, in the opinion of the board of internal improvement, be so changed, as that both roads shall cross on the same bridge, without material inconvenience to the public, it shall be lawful for the board to make such change.

SEC. 56. That in all cases where the route of any state or county road shall be changed, under the authority of the preceding sections, it shall be the duty of the acting commissioner having charge of the canal, when such change is made, to make out a plat or map, representing such change, with the courses and distances of the new road, and file the same in the proper office of the county in which such road may lie, which plat and courses of such new road, shall thereafter be received as the established location.

SEC. 57. That the fund commissioners be, and they are hereby authorized and directed, at such time as they may deem most conducive to the public interest, to negotiate a loan, not exceeding four hundred thousand dollars, in addition to the loans heretofore authorized by law, the proceeds of which shall be expended in the completion of the Wabash and Erie canal, east of Tippecanoe river; said loan to be on a credit of fifty years, but redeemable in whole or in part after the expiration of twenty-five years, at the option of the state, and to be at a rate of interest not exceeding six per cent. per annum, and for the punctual payment of the interest, and the final redemption of the principal of all loans obtained under the authority of this act, there shall be, and are hereby irrevocably pledged, all the moneys arising from the sale of the lands which have

State or county
road how changed.

Same.

Ret'n of change
to be made to
clerk's office.

Loans of \$400,000 authorized for W. & E. C.

been donated by the United States for the construction of this canal, and other profits arising therefrom; the sufficiency of which to pay the interest and principal, as the same may become due, the state of Indiana doth hereby irrevocably guarantee.

Loans donated to W. & E. canal how selected

SEC. 58. That from time to time, as the lands of the Wabash and Erie canal, which were donated to the state of Indiana, by the act of congress of 2d March, 1827, for the purpose of aiding the state in the construction of said canal, shall be surveyed, the state board of internal improvement shall proceed to, and shall select said lands, agreeably to the true intent and meaning of the aforesaid act of congress, omitting all reservations made by the treaty, and make three complete plats, maps, and descriptions of said lands, showing the numbers, townships, ranges, and other necessary descriptions, together with the aforesaid reservations, if any, which would have fallen to the state, had no such reservation been made; and shall immediately forward one of said plats to the commissioner of the general land office of the United States, and one to the auditor of public accounts of the state of Indiana, and retain in their own canal land office the other.

Engines &c. to be purchased for M. & Indianapolis rail road.

SEC. 59. That the board of internal improvement is hereby authorized to purchase such locomotive engines, tender, and carriages, of American manufacture, for the use of the Madison and Indianapolis rail road, as in their opinion may be required, to furnish the necessary motive power, to accommodate the business of said road; and they shall have power to establish such marts, stations, and depots, as may be necessary for the same, all of which shall be paid out of the fund heretofore appropriated to said rail road.

This act to take effect and be in force from and after its passage.

CHAPTER XVII.

AN ACT concerning Clerks.

[APPROVED JANUARY 20, 1831.]

Clerk of Sup. court to keep office at seat of government.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana.* That the clerk of the supreme court, shall reside and keep his office at the seat of government; and the clerks of the several circuit courts shall severally keep their offices open, each and every day in the year, (Sundays and the fourth of July excepted) from the hours of nine o'clock A. M. until three o'clock P. M., during which time they are severally required to give due attendance, either in person or by deputy, and at all other times within reasonable hours, when thereto required by any person having business to transact in any of said offices; and the clerks of the supreme and circuit courts shall procure

Office hours of clerks of circuit court.

for the use of their respective offices, all the necessary books, well bound, one of which shall be kept as a complete record book, in which they shall severally record, at full length, all cases necessary to be recorded, and shall make up the records of each term, on or before the first day of the next succeeding term. The said clerks shall, with every execution they may severally issue, make out and deliver to the officer with the same, a detailed bill of all the costs due on such execution, to be by said officer delivered to the party against whom the said execution may issue, upon his, her or their replevying or paying the same, together with his certificate thereon, that the said execution was so replevied or paid. Books and records, how kept.

SEC. 2. The clerks of the supreme and circuit courts, are hereby authorized, by themselves or deputies, to administer all oaths which may become necessary, in the discharge of their several duties; and the said clerks shall, in all cases, be held responsible for the official acts of their deputies. Fee bills, when to be issued.

SEC. 3. That the clerks of the circuit courts of the several counties within this state, shall enter on their dockets, transcripts of judgments obtained before justices of the peace of their proper county, for the fee of twenty-five cents; which transcript the justice shall deliver to any plaintiff, his agent or attorney, who may apply for the same, which judgments from the time of such entries on the order book of such circuit court, shall bind the real estate of such defendant or defendants; but no fieri facias shall be issued by such clerk, until a certificate shall be first produced, from the justice before whom the original judgment was obtained, stating therein, that an execution has issued to the proper constable, as directed by law, and a return thereon, that no goods or chattels could be found, sufficient to satisfy said judgment: *Provided also,* That no such writ of fieri facias, shall be issued by such clerk, until a summons or scire facias shall issue against such defendant or defendants, notifying him, her or them, to appear before the circuit court of the proper county, to shew cause if any, why a writ of fieri facias, or execution, should not issue on said judgment. Clerks may administer oaths.

SEC. 4. The clerk of the supreme court, before entering upon the duties of his office, shall take an oath of office, similar to that provided by law to be administered to the judges of the supreme court, before one of the judges of said court, and shall also give bond to the state of Indiana, in the penalty of five thousand dollars, with at least two sureties, to be approved of by said court, conditioned for the faithful discharge of the duties of his office, which bond shall be recorded in the said court, and filed in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit, from time to time, at the instance and for the benefit of any party injured, until the whole penalty shall be recovered thereon. Justices' transcripts, how filed, and lien on lands.

SEC. 5. The clerk of the circuit court, before entering upon the duties of his office, shall take an oath or affirmation, similar to that required to be taken by the clerk of the supreme court; a certificate of which shall be endorsed on his commission, and a copy thereof filed in his office, and shall also give

Fi. fa. not to issue on justices transcript until scire facias &c.

Oath of clerk Sup. court.

Bond of clerk of Sup. court.

Bond where recorded and filed.

Oath of clerks of C. court.

Bond of clerk of
C. court.

bond, payable to the state of Indiana, in the penalty of two thousand five hundred dollars, with two or more sureties, to be approved of by the associate judges of the proper county, conditioned for the faithful discharge of the duties of his said office, and seasonably to record all decrees, judgments and orders of the said court, and also to pay over all moneys which shall or may come into his hands, for the payment, or in discharge of any judgment, order, or decree of said court, or in any other manner, by virtue of his office, to such person or persons as shall by law have a right to demand and receive the same, and to do and perform all other acts which may be required of him by law. The said bond shall be recorded in the recorder's office of the proper county, within twenty days after its execution, and a certified copy thereof by the recorder, shall in all cases be deemed equivalent in evidence, or on profert, to the original; and shall also be spread upon the records of said court, and the original filed among the papers thereof, and shall not be void on the first recovery, but may be put in suit at the instance and for the benefit of any party injured, from time to time, as often as the condition thereof may be broken.

Bond where re-
corded.

Copy of bond to
be evidence.

Chancery causes
how certified up
to Sup. court.

SEC. 6. In all chancery cases, which may be transferred from the circuit to the supreme court, by reason of the prejudice or interest of the presiding judge of such circuit court, it shall be the duty of the clerk of the circuit court, on application of either party, to deliver over the papers on file in said cause, in his office, together with a complete record of the proceedings in said cause, in order that the same may be transmitted to the clerk of the supreme court, to be by him docketed in the same manner as other causes: *Provided*, the party so applying, shall give bond in such sum as either of the associate judges of the said court shall deem sufficient, payable to the opposite party, for the safe transmission of such papers.

Proviso that
bond be given
by party taking
up.

Clerk shall ap-
prove of bonds
of sheriffs, &c.
where there are
no judges.

SEC. 7. Whenever it shall happen that there are no associate judges in any county, commissioned and qualified to act, it shall be lawful for the clerk of the circuit court, to approve of the security, and take the necessary bonds, of sheriffs and coroners; and such bonds, when so taken, by any such clerk, shall have all the force and effect of bonds taken by associate judges in similar cases, and shall be disposed of in the same manner.

Clerk of sup.
court shall pre-
serve papers.

Shall docket
causes in order.

SEC. 8. The clerk of the supreme court, shall carefully preserve the transcripts of records certified to said court, with the bonds for prosecution, and all papers relative to them, and other cases pending in said court, docketing them in the order in which he may receive them, that they may be heard in the same order, unless otherwise directed by the court.

Proceedings of
Sup. & C. courts
to be drawn up,
&c.

Complete record
by clerk of cir-
cuit court.

Clerk of Sup.
court may re-

SEC. 9. The proceedings of the supreme and circuit courts of each day during term time, shall be drawn up at full length, by the clerks thereof, and when any cause shall be finally determined, the clerk of the court in which the same was determined, shall make out a complete record thereof.

SEC. 10. That whenever any person shall request the clerk of the supreme court of this state, to record any deed of con-

veyance, or other evidence in writing, affecting the title of real estate, it shall be his duty to record the same in his office: *Provided, however*, That the said clerk shall not admit to record, any deed of conveyance or other evidence in writing, affecting the title of real estate, unless a certificate of the recorder of the proper county, where such deed of conveyance, or other evidence in writing, has been recorded, in pursuance of the laws of this state, shall accompany such deed of conveyance, or other evidence in writing, under his hand and seal, nor unless the same shall have been duly acknowledged according to law. Such deeds of conveyance, or other evidence in writing, affecting the title of real estate, so authorized to be recorded by the clerk of the supreme court, shall be taken and received in evidence, in all courts of record in this state, in the same manner, and under the same restrictions, as the records of the several recorders of the counties in this state.

SEC. 11. It shall be the duty of the clerks of the circuit courts, in their several counties, to lay before the grand juries, and the boards doing county business in said counties, at the last session in each year of said court and board, a statement in writing, exhibiting, as near as may be, the situation of the seminary funds in their several counties, which shall be spread upon the record of the proceedings of said board at such session.

SEC. 12. Whenever there is no clerk of the circuit court, in any organized county, or the clerk shall resign, die, or be removed from office, it shall be the duty of the proper court, to appoint a clerk pro tempore, and if such vacancy shall happen in vacation, the judges of said court, or a majority of them, (or the president judge alone, if the associate judges should not attend,) shall meet as soon as practicable thereafter, and proceed to fill such vacancy; and the person so appointed, shall continue in office, until a clerk shall be duly elected and qualified, and shall immediately thereon take an oath or affirmation of office, and enter into bond with approved security, as in other cases.

SEC. 13. Whenever the board doing county business, in any of the counties of this state, shall have erected for the use of their proper county, a fire proof building, it shall be the duty of the clerk of the circuit court thereof, forthwith to deposit in said building, all papers, books, and records, appertaining to his said office.

SEC. 14. In all cases, where any clerk of the circuit court, shall have necessarily purchased record books, for the use and benefit of his office, he shall present his account therefor, to the board doing county business, and the amount of such purchase, shall be allowed him by said board, if reasonable.

SEC. 15. It shall be the duty of the clerks of the several circuit courts, semi-annually, on the first Mondays in January and July, to make from the returns of the executive and ministerial officers of their respective counties, a detailed statement of all jury fees collected during the last half year, and deliver the same forthwith, to the treasurer of their respective counties, and said clerks, in making such return, shall also make return

of all such jury fees which may have been collected, since the 12th day of February, 1825, and which may have been overlooked and not returned.

AN ACT in amendment to an act entitled "an act concerning clerks," approved January 20, 1831.

[APPROVED FEBRUARY 1, 1834.]

Clerks to register names of justices, &c.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be the duty of the several clerks of the circuit court to procure a book, in which shall be registered the names of the justices of the peace, sheriffs, coroners, and constables of the county in which they may be clerk, when commissioned, when qualified, and in case of justices of the peace, the time when their term of office expires; and when a vacancy for any cause occurs, as near as may be when it takes place; likewise, a memorandum of the official bond which shall be given by such officers, containing the names of the parties thereto and the penalty.

Compensation.

SEC. 2. The several clerks shall receive as a compensation for such services, fifty cents, to be paid by the above officers at the time they are qualified.

SEC. 3. The clerks of the circuit court shall be authorized to administer all such official oaths as may be necessary for parties, their agents, or attorneys to take, in the conducting of civil suits.

AN ACT for the benefit of Revolutionary Soldiers.

[APPROVED FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That from and after the passage of this act, the several clerks of this state shall not be permitted to charge or receive any tax or fee for fixing the seal of office, which may be necessary to perfect the testimonials of any revolutionary soldier, for services performed by him during the revolutionary war; nor shall said clerks be entitled to any fee for fixing the seal of office to any instrument of writing which may be necessary in drawing the pension which may be allowed such revolutionary soldier; nor for any certificate or attestation to any such instrument, nor for any duty which they may be required to perform for such soldier in procuring his pension, or the receipts of the same after it may have been allowed.

SEC. 2. *Be it further enacted*, That the provisions of this act shall apply to the officers and soldiers of the late war in the same manner that they apply to revolutionary soldiers.

AN ACT in amendment to an act entitled "an act concerning clerks," approved February 7, 1834.

[APPROVED FEBRUARY 7, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the clerks of the circuit courts shall be authorized to administer all oaths, as it may be necessary for the parties, their agents, or attorneys to take in conducting suits in the circuit or probate courts, and also all official oaths, which an officer elected to perform a duty in any county shall be required to take. The third section of the act to which this is an amendment is hereby repealed.

C. may administer oaths in certain cases.

AN ACT to amend an act organizing Circuit Courts, and defining their powers and duties.

[APPROVED, JANUARY 20, 1837.]

Be it enacted by the General Assembly of the State of Indiana, That hereafter in all new counties where seals for the circuit courts have not been devised by the courts, it shall be lawful for the several clerks of such counties to seal all writs and other process, or matters where the seal of a court shall be required by law, with his own private seal; and all such process or other matters which may heretofore have been sealed with the private seal of such clerks shall have the same force and validity in law and equity, as if the same had been sealed with a seal adopted by the court.

In co's. where no seal has been adopted c. may use his private seal.

This act to be in force from and after its passage.

CHAPTER XVIII.

AN ACT to authorize the loaning of the College Funds.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That a loan office shall be, and the same is hereby established for the state of Indiana, in the town of Indianapolis, to be connected with, and kept at the office of the state treasurer, and to be under the superintendence of the state treasurer for the time being.

Loan office established under the control of the treasurer.

SEC. 2. The treasurer before entering upon the duties by this act enjoined, shall be duly sworn, by some authorized person, faithfully to discharge his duty, as herein required; and moreover give bond with approved security in the penal sum of twenty thousand dollars, payable to the state of Indiana, for the use of the Indiana college, and to be approved of

Treasurer's oath and bond.

by the governor, and conditioned for the faithful discharge of the duties of his office as superintendent aforesaid, which bond shall be filed in the office of the auditor of public accounts, and shall from its date be a lien on the lands and tenements of the obligors.

Funds.

SEC. 3. The funds for the loan office hereby established, shall consist of the principal of all moneys, the proceeds of the sales of the college lands in Gibson and Monroe counties, which now are, or shall hereafter, agreeably to the laws of this state, be paid into the state treasury; together with all grants, gifts, and donations made in money, and which by the donor may be directed to be funded in said loan office, for the use of the college aforesaid.

Tr's. powers as superintendent to lend the funds upon mortgage.

SEC. 4. The treasurer of state as superintendent of the loan office aforesaid, shall have power, for and on behalf of this state, and it is hereby made his duty, from time to time, to make loans of any, or all the moneys in said office, to citizens of Indiana, on a pledge of real estate, to be secured by mortgage as hereinafter prescribed.

Title of mortgage premises, how investigated.

SEC. 5. The treasurer aforesaid shall duly inform himself of the value of all real estate, and shall be judge of the validity of the title thereof, which may be offered as security for moneys on loan; and in order to secure the said treasurer the more effectually from imposition, it is hereby made the duty of all persons, applying to him for moneys on a loan, to produce to said treasurer for his inspection, a clear and valid title in fee simple, to the property proposed to be mortgaged at said loan office.

Tr. may appoint com'rs to value real estate offered in mortgage.

SEC. 6. The treasurer shall have power, whenever he may deem it necessary, to appoint commissioners in any county of this state, to value and appraise any lands which may be offered in mortgage at the said loan office, and every valuation of land in any county as herein provided, shall be signed and certified, by at least three of said commissioners: *Provided always*, that said treasurer shall have power to fill all vacancies, or to remove any such commissioners at pleasure.

Duty of such com'rs as to valuation.

SEC. 7. The commissioners appointed in any county as aforesaid, after being duly sworn, faithfully to discharge their duty as herein required, shall on application of the owner of any land or freehold estate in their proper county, proceed to examine and appraise said property, and after such examination and appraisal had, to give the owner thereof, a certificate, under their hands and seals, setting forth the valuation thereof in specie, at the common selling rate, at the time being, in their said county, and moreover specify in said certificate, the amount of land in acres, the quarter or half quarter section, the number of the section, township and range, in which such land lies; or where any lands valued as aforesaid, have not been surveyed by authority of the United States, then it shall be the duty of said commissioners, otherwise to designate and specify the land in the best manner possible.

Com'rs compensation.

SEC. 8. The commissioners appointed by the treasurer as aforesaid, to value lands to be mortgaged to said loan of-

office, shall be entitled to receive one dollar per day, to be paid by the borrower.

SEC. 9. All moneys shall be loaned out of the loan office aforesaid, at an interest of six per centum per annum, which shall be always paid in advance, nor shall any person receive money on loan to a greater amount than one-half the real unincumbered value of the lands mortgaged therefor at the loan office; nor shall any one person borrow [money] out of said loan office, to a greater amount than five hundred dollars.

SEC. 10. The mortgage to be taken in security at the loan office, may be taken in the following form in substance, to wit: I, A. B. do assign over and transfer to — superintendent of the loan office of Indiana, and his successor in office, for the use of the Indiana college, (here describe the land particularly,) which land I declare to be in mortgage for the payment of — dollars, with six per cent. per annum from the — day of —, and I do agree that the same may be exposed to sale, if not paid at maturity, for the principal and interest at the time when the same shall become due and payable, together with five per centum damages thereon, and all costs, witness my hand and seal, this — day of — 18—. Which mortgage shall be accompanied with a note or bond for the sum so borrowed, and shall be valid to all intents and purposes.

SEC. 11. All mortgages taken for loans of money under this act, shall be considered as being of record from the date thereof, and shall have priority of any mortgages or conveyances of the same property not previously recorded in the county where the land lies; and the person applying for a loan of money, shall produce a certificate from the recorder and clerk of the county where the land lies, to the superintendent of the loan office, that there is no conveyance or incumbrance on said land, in either of their offices, and shall moreover take an oath before the superintendent aforesaid, before he shall be entitled to receive the amount allowed on the mortgage of his land, that there is no incumbrance or better claim in law or equity that he knows of, or believes, on the said land; and any person swearing falsely in the premises, shall be liable to all the pains and penalties provided by law for wilful and corrupt perjury: *Provided however*, that all mortgages, taken as is herein directed, shall be recorded within thirty days after the execution thereof, in the county where the land so mortgaged lies.

Clerk shall certify to no incumbrance, and applicant shall also make oath.

Mortgage to be recorded.

SEC. 12. That no money shall be loaned at said loan office for a longer term than five years, the interest of which shall be paid annually in advance; and in all cases where the interest or amount loaned shall be in arrear or due, the superintendent aforesaid shall be, and he is hereby authorized and required to advertise the mortgaged property sixty days in one or more of the newspapers printed in this state, and make sale of so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due, together with five per cent. damages thereon and costs of advertising and selling the same; and the said superintendent is hereby fully empowered to make convey-

Moneys to be loaned 5 years.

Mode of enforcing payment.

ances of the same to the purchaser or purchasers thereof, or if he should deem it proper, to buy in the same for the benefit of the Indiana college aforesaid, and immediately, if possible, or at any time thereafter may proceed to sell said land to the highest bidder (the bid being equal to the amount chargeable on said land) on a credit of five years, the purchaser to pay the interest annually in advance, and the land to forfeit immediately for the benefit of said college, if said principal or interest, or either of them shall not be punctually paid according to the terms of such sale: *Provided*, that when the premises sell for a greater sum than the said debt, interest, damages, and costs, the said superintendent shall pay the overplus over to the mortgager, his heirs or assigns.

SEC. 13. That when any land mortgaged to the loan office, on being exposed to sale, according to law, shall fail to sell for want of bidders, it shall be lawful for the superintendent to dispose of the same to different purchasers in such divisions as he shall judge to be of most advantage to the college fund, if the whole amount charged on said lands can be realized thereby.

SEC. 14. The superintendent aforesaid shall keep fair and regular entries, in a book or books to be kept for that purpose, of his proceedings as herein required, and shall make a detailed and accurate report thereof to both houses of the general assembly of this state, on the first week of each session annually, setting forth the names of the persons borrowing money, the amount so borrowed, and the manner in which the same is secured; and moreover shall submit to the legislature, or a committee thereof, when required, all books, documents and papers whatever, in relation to or concerning the loan office aforesaid.

SEC. 15. No provision of this act shall be so construed as to prevent the superintendent of the said loan office, from loaning any money in said office to the state of Indiana, upon the faith and credit of the state.

SEC. 16. It shall be the duty of the superintendent aforesaid, at all times, to pay over to the order of the board of trustees of the Indiana college, duly signed by the president, and countersigned by the secretary thereof, any interest on moneys accruing from the loans herein contemplated, and to charge the same against the said Indiana college.

SEC. 17. The treasurer of state, for his services required as superintendent of the loan office aforesaid, shall receive each year seventy-five dollars, in addition to his salary now allowed by law, to be paid out of the interest accruing from the fund aforesaid, together with three fourths of one per cent. per annum on outstanding loans in the several branches of the loan office, to be paid out of the proper funds agreeably to the amount of each so outstanding.

SEC. 18. It shall be the duty of the superintendent to reduce the amount authorized to be loaned on any valuation, when, from the face of the valuation or from information received, he shall have reason to believe, such valuation was not in proportion to the prices of similar property selling in the vicinity.

Treas. to report to gen. assembly the names of borrowers and am't borrowed.

Treas'r may loan to state.

Int. to be paid to the Ia. college

Compensation to treasurer.

SEC. 19. The superintendent of the loan office in securing the loans of the college fund shall not take into consideration the value of the perishable improvements on the lands proposed to be mortgaged to said superintendent, nor shall he receive any title as valid which is derived from any deed from any sheriff, collector, executor, administrator or guardian.

SEC. 20. When any land shall be sold as aforesaid and full payment be made therefor, the superintendent shall make a deed for the same to the purchaser thereof and the superintendent for his services in attending said sale and making said deed shall receive five per centum of the amount of the sale payable out of said damages, and when said land shall be sold on a credit as herein before directed, the superintendent shall give the purchaser a certificate of such sale, and the terms on which it is made, for which he shall have the same allowance.

SEC. 21. All sales of land made under the provisions of this act, shall be held at the court house door in the town of Indianapolis in pursuance of the notice given as aforesaid.

SEC. 22. The superintendent of the loan office shall record all deeds and certificates, made as aforesaid, and his said deeds sealed with his private seal shall be taken and deemed as full evidence of the transaction therein specified.

SEC. 23. It shall be lawful for the said superintendent, to loan any interest of the college fund in his hands in the same manner as other funds: *Provided*, said interest shall not be wanted for the use of [the] Indiana college.

SEC. 24. The superintendent aforesaid is hereby empowered and authorized to administer all oaths required by this act.

SEC. 25. That should any of the commissioners of the reserved townships of Monroe or Gibson [counties], or any commissioner of any of the saline reserves in this state, fail to make reports to the treasurer of state as required by law, or should any of said commissioners fail to pay into the state treasury any funds in their hands agreeably to law, or as shall be required by the treasurer of state, it shall be the duty of the said treasurer to bring suit against said delinquent commissioner and his security on the official bond of such commissioner.

SEC. 26. That should any person who has or may be appointed or elected as any such commissioner fail to enter into bond with such securities as is required by law, within sixty days from such appointment or election, it shall be the duty of the governor to appoint some suitable person to discharge the duties of such office until the end of the next session of the general assembly, and such commissioner first appointed or elected as aforesaid, shall hand over to such new commissioner as aforesaid, all books, papers, moneys, and effects in his hands, appertaining to or belonging to said office, and on failure or neglect so to do, the treasurer of state shall cause suit to be brought forthwith against such person so failing or neglecting as aforesaid.

This act to take effect and be in force from and after its passage.

Deed to be made

Sales when held

CHAPTER XIX.

AN ACT authorizing the appointment of Constables, and defining their duties.

[APPROVED FEBRUARY 17, 1838.]

Constables to be elected 1st Monday in April annually.

Term of office.

Inspectors to give certificates of election to clerk.

Clerk to certify.

Constable's oath.

Constable's bond.

Bond may be approved by clerk.

Condition of bond.

Bond to be filed with clerk, &c.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the qualified voters, residing within the several townships of the counties of this state, shall meet together, at the usual places of holding general township elections, on the first Monday in April next, and annually on the first Monday of April thereafter, for the purpose of electing as many constables in each township, as there are justices of the peace within the same, and the persons so elected, shall continue in office, by virtue of such election, for the term of one year, and until their successors shall be elected and qualified, but nothing herein contained, shall compel them to serve longer than three months, after the expiration of one year.

SEC. 2. It shall be the duty of the inspectors of elections, in each township, within three days after such election, to make out and deliver to the clerk of the circuit court, a list [of] the several constables elected, whose duty it shall be to make out certificates of the election of the person or persons so elected, and the sheriff of said county shall deliver the same to the constables elected.

SEC. 3. Every constable, before he enters upon the duties of his office, shall take an oath or affirmation, before some competent authority, to support the constitution of the United States, and that of this state, and faithfully to discharge his duty as such constable during his continuance in office, according to the best of his skill and ability; and the officer administering such oath, shall make out a certificate thereof, and cause it to be filed in the clerk's office of the proper county.

SEC. 4. Every constable, before taking the oath aforesaid, shall execute a bond, with at least two freeholders of the proper county as his securities, to the acceptance of the board doing county business, payable to the state of Indiana, in a penal sum of not less than three hundred, nor more than two thousand dollars, to be determined by the board doing county business; which bond may in vacation be taken by the clerk of the court, who is hereby authorized to approve of the sufficiency of the security, the board fixing the amount of the bond, conditioned for the safe keeping and paying over, to the proper person or authority, of any and all moneys which may be collected or received by him, or otherwise come into his hands, by virtue of his office, and for the due, honest and faithful discharge and performance of all and singular, his duties as such constable, during his continuance in office, as such, in all things agreeably to law; which bond shall be filed with the clerk of the board doing county business, of the proper county, for the benefit of all persons who may be injured or damaged by the malfeasance, misfeasance, or non-feasance of such constable.

SEC. 5. Whenever a vacancy in the office of constable shall happen in any township, by death, removal, resignation, dis-qualification, or by any cause, the board doing county business of the proper county, shall, at their next session, appoint a suitable person or persons to fill such vacancy, until the next annual election for constables, and until a successor be appointed and qualified; and the constable so appointed shall take a like oath and give a like bond, as above required in other cases; also any justice of the peace may appoint a constable or constables, for a special purpose, in either a civil or criminal case, whenever such appointment may become necessary, by reason of the sickness or absence of the regular constable or constables, or in any other emergency rendering such special appointment in the opinion of such justice absolutely necessary; and the constable thus specially appointed shall if required by such justice, take the oath and execute bond as above required.

SEC. 6. It shall be the duty of every constable, to apprehend on view, or on warrant, and bring to justice, all felons and disturbers of the peace; and violators of the criminal laws of this state, to suppress all riots, affrays and unlawful assemblies, and in other respects generally, to keep the peace in his proper county, and to serve and execute all warrants, writs, precepts, and other process to him directed, or delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable. In discharging their duty in any respect whatever, constables may call to their aid the power of the county, or such assistance as may be necessary.

SEC. 7. Each and every constable shall on the receipt of any writ, precept, or other process (subpoenas excepted) note thereon the time of receiving the same, and shall also note on any writ, precept or other process, (subpoenas included) time and manner of serving or executing the same, and shall make due return at the proper time and place, of all writs, precepts, subpoenas, or other process, whether served or not served.

SEC. 8. Each and every constable, shall attend before the proper justice, on the return day of process, keep order in the justice's court, and execute all lawful commands of the justice, under pain of a fine not exceeding three dollars, for each neglect or refusal, to be assessed by such justice or some other justice of the proper county, against such constable; but no such fine shall be assessed, until such constable shall be informed or notified of the complaint or charge, and have an opportunity of being heard in his defence; and in such cases when it is not in his power to produce disinterested testimony, his own oath may be received, and considered; and all constables shall be ministerial officers in justices' courts, in their respective townships, in civil cases, and in their respective counties in criminal cases.

SEC. 9. Whenever the surety or sureties to the bond of any constable shall die, remove or become insolvent, or insufficient, and complaint thereof in writing be made to the board doing county business, of the proper county, it shall be the duty of such board, on ten days notice in writing of such complaint being given to such constable, and his securities, if living in the

county, either before or after the making of such complaint, to inquire into such complaint, and if satisfied of the truth of such complaint, to require such constable to give other and sufficient security, by bond, as aforesaid; and the proper board doing county business, shall have power, whenever in their opinion the public good or the interest of individuals shall demand it, to require any constable, on notice as aforesaid, to give further or additional security, by bond as aforesaid; but in neither of the above cases, shall the original bond or securities, be thereby discharged or affected; and in either case, any constable neglecting, failing, or refusing, to give such additional or further security, agreeably to the order or requisition of such board, shall be dismissed from office, and another appointed in his stead.

Original bond to stand.

Constable may be removed, &c.

General powers of constables.

Proviso as to escapes and fugitives to other counties.

SEC. 10. In serving all process, in either civil or criminal cases, and in doing his duties generally, when not otherwise provided for, the authority of a constable shall extend throughout the whole county, in which he may be appointed; and in case of the escape, absconding or flight of offenders, or persons charged in criminal or state cases, the constable may pursue and take or re-capture the escaping, absconding or fleeing person, any where in this state, and convey him back to the proper county, to be dealt with according to law: *Provided*, That when any constable shall pursue any person escaping or fleeing from arrest, or legal custody, from one county into another, such constable shall go before some justice of the county, in which such fugitive may be, or be supposed to be, and make oath that the process was issued in the county from which such fugitive shall have escaped or fled, or that such fugitive has escaped from legal custody in the last named county, and that he is in pursuit of such fugitive; and when such oath shall be made, such justice, when a warrant or other process is produced to him, shall endorse his name thereon as such justice, or in case of other escape from custody and pursuit, shall issue his warrant to such constable, authorizing and commanding him, to seize such fugitive, and retake him to the county from which he may have escaped or fled, which endorsement or new warrant, shall give such constable full authority to make such arrest, or re-capture, as he would have in his own proper county.

Constable's sales when and where to be made.

SEC. 11. All sales of property made by any constable, by virtue of his office, under any law of this state, shall unless otherwise specially directed by law, be made between the hours of 10 o'clock A. M. and four o'clock P. M. at the dwelling house, or on the premises where such property shall be seized or taken, or some public place in the township, where the same shall be seized or taken, and shall be as public as the nature of the case will permit. At least ten days previous notice of the time and place of such sale shall be given by the constable, by manuscript advertisements set up in three public places, in the township where such sale is to be held.

Notice of sale.

SEC. 12. It shall not be lawful for any constable, directly or indirectly, to purchase any judgment or part thereof, on the

docket of any justice in the township where such constable resides, or to receive a transfer or assignment thereof; nor shall it be lawful for any constable, directly or indirectly, to purchase any property offered for sale by him, as such constable; and all purchases, assignments, and transfers of judgments, or parts thereof, and all purchases of property made, accepted or received by any constable, contrary to, or in violation of the spirit and meaning of this section, and all contracts and agreements, touching or growing out of the same, shall be and are hereby declared utterly null and void, and shall be considered as malfeasance on the part of such constable.

SEC. 13. It shall and may be lawful for any constable, having in his hands any execution requiring a sale of property, seized or levied on, by virtue thereof, to take bond with sufficient security, from the judgment debtor, if tendered, for the delivery of such property at the time and place of sale, as advertised, which shall be stated in the condition of the bond, in as good condition as the same may be in, at the date of the bond, which shall be payable to the judgment creditor, and in double the amount due on the execution; and the constable taking the bond, shall be held responsible for the sufficiency of the bond and the securities, at the time of taking the same. And if the property be delivered according to the condition of the bond, the constable shall receive the same, and proceed to sell as in other cases. And whenever there shall be a failure of delivery, agreeably to said bond, the constable shall return the bond with the execution, to the justice, noting in his return the facts of the case, after which time the bond shall be at the disposal of the obligee therein.

SEC. 14. The obligee in a delivery bond, shall not, in case of a forfeiture, be compelled to resort thereto in the first instance, but may proceed further on the original judgment (which shall not in such case be considered as satisfied) by execution or otherwise, against either the property or body of the judgment debtor, as the case may warrant or require, in the same manner as if no such bond had been taken; and may if necessary, afterwards resort to the bond, or he may resort to the bond in the first instance. On failure to comply with the condition of such bond, the justice of the peace shall at the request of the plaintiff, issue a *capias ad-satisfaciendum* against the judgment debtor in the original case.

SEC. 15. In actions on such delivery bonds, after a forfeiture, or against constables, or constables and their securities, for taking insufficient bonds or securities, the plaintiff's rule of damages, shall be first, the amount due on the execution, at the time of the forfeiture of the bond, with interest and ten per cent. thereon and the costs; except that the interest and ten per cent. shall not be allowed in costs, in case the value of the property not delivered, shall equal or exceed the amount due on the execution, at the time of such forfeiture; second, the value of the property not delivered, with interest and ten per cent. thereon, if such value shall not equal the amount due on the execution.

Constables may not purchase justice's judgments, nor property sold by constables.

Bonds for delivery of property, how taken.

Condition of delivery bond and to whom payable

Const's responsibility as to delivery bonds.

Forfeited delivery bond, how disposed of.

Remedies of obligee in delivery bond, in obtaining satisfaction of judgment.

Damages on forfeited delivery bonds.

No replevy of judgment on delivery bonds.
No appeal but on affidavit of merits.
SEC. 16. No stay of execution shall be allowed to defendants, in judgments on delivery bonds, in any court; and no appeal shall be allowed to such defendants from justices to the circuit court, unless upon affidavit of merits in the appeal, and that the same is not sought to be taken for delay merely, but for justice.

Penalty for bidding and failing to pay a constable's sale.
SEC. 17. Any person who shall purchase or bid off property, at constables' sales, and fail or refuse to pay therefor, agreeably to the terms of sale, shall be liable to damages not exceeding half the amount of such purchase or bid, to be recovered by suit in any court of competent jurisdiction, in the name of the party to whom the money arising from such sale would be due and payable; one half of such damages, so recovered, to go to the use of the constable holding such sale, the other half to the use of the plaintiff in such suit.

Penalty on constable for failing to return process or pay over money.
SEC. 18. It shall be the duty of every constable, to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof, and to pay over to the proper party, on reasonable demand, or in the absence of such demand, to the proper justice, on the proper return day, any and all moneys collected, or received by him, by virtue of his office, on execution or otherwise; and for failure to make such return at the proper time and place, or within six days thereafter, or to pay over to the proper party on reasonable demand, or to the proper justice in the absence of such demand, on the proper return day, or within six days thereafter, or for making false return; in either of these cases the constable shall be liable to the injured party, and may be proceeded against by scire facias, before a justice of the peace; or the constable and his sureties may be sued on their bond; and in either case, the party aggrieved, shall be entitled to recover and have of the constable in the one instance, or of the constable and his sureties in the other, the full amount collected or received and withheld by the constable, or which he might and should have collected and paid over, with interest and ten per centum thereon, and costs; but no interest or per cent. shall be computed or allowed on costs.

Remedy by scire facias or on constable's bond.
SEC. 19. Whenever it shall become necessary for a constable in the discharge of his duty, to commit any person to the custody of the sheriff, jailor, or other keeper of the common jail of the county, such constable shall, together with the body, deliver to such sheriff, jailor, or keeper, a certified copy of the execution, writ, or other process, or warrant of commitment.
10 per ct. damages allowed.
SEC. 20. In serving or executing, mesne or final process, emanating from a justice or justices of the peace, a constable shall have and exercise the same authority and powers, over goods and chattels, or the persons of parties, that a sheriff or coroner has or may exercise over similar subjects, under the like process of courts of record; and mesne or final process, emanating from a justice or justices, shall have the same force and effect, over the subjects aforesaid, as the like process of

Proceedings on commitments.
SEC. 21. That whenever hereafter, the securities of any constable, shall become apprehensive that they will be suffered by reason of abuse of his power, or the improper use of money by him collected for another, they may make complaint to the board doing county business, who shall forthwith notify such constable to appear before them, and enter into new bond and security, or be removed from office; and the said board is hereby authorized to hear and determine such case, in such manner as to them may seem just and right: *Provided*, that no order taken or made, by such examination, by the commission-ers, shall do away, or affect, the bond previously given by the constable and his security.

Sheriff's powers granted constables.
SEC. 22. That whenever hereafter, the securities of any constable, shall become apprehensive that they will be suffered by reason of abuse of his power, or the improper use of money by him collected for another, they may make complaint to the board doing county business, who shall forthwith notify such constable to appear before them, and enter into new bond and security, or be removed from office; and the said board is hereby authorized to hear and determine such case, in such manner as to them may seem just and right: *Provided*, that no order taken or made, by such examination, by the commission-ers, shall do away, or affect, the bond previously given by the constable and his security.

Effect of justice's process.

courts of record, unless in cases otherwise specially provided for by statute.

Securities of constable may have him removed or give other security.
SEC. 21. That whenever hereafter, the securities of any constable, shall become apprehensive that they will be suffered by reason of abuse of his power, or the improper use of money by him collected for another, they may make complaint to the board doing county business, who shall forthwith notify such constable to appear before them, and enter into new bond and security, or be removed from office; and the said board is hereby authorized to hear and determine such case, in such manner as to them may seem just and right: *Provided*, that no order taken or made, by such examination, by the commission-ers, shall do away, or affect, the bond previously given by the constable and his security.

CHAPTER XX.

AN ACT concerning Corporations.

[APPROVED JANUARY 31, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever hereafter any corporate body shall be dissolved, the lands, tenements, hereditaments, goods, chattels, rights, credits, moneys, and effects, belonging to the same, shall pass, as incident to the franchises of such corporation, and be vested in the state of Indiana as the legal proprietor; and right of action to recover and reduce the same, in whose possession soever they may be, into the hands and control thereof, shall belong to the state and its assigns; and shall be for the purpose and intent to discharge, settle, and pay all contracts, obligations, and trusts, of what description soever the same may be, contracted or incurred by such corporation during the existence of their corporate privileges; and all contracts, obligations, and trusts made between such corporation and other persons, shall be and remain in full force; and all debts, dues, and demands shall and may be prosecuted and recovered, in the name of the state of Indiana, or her assigns, against all persons, against whom rights or actions in favor of such corporation existed, either at law or in equity, prior to the dissolution of such corporation.

SEC. 2. That the legal capacity, in which the said state shall take the estate real and personal aforesaid, shall be joint of that of heir and administrator: and the duties and trusts, thereby created, shall be performed by the treasurer of state and auditor of public accounts, or such persons, as they may assign the same to; such assigns always giving bond with penalties and sureties to be approved of by said treasurer and auditor, payable to the state of Indiana, and conditioned for the faithful performance of the trusts and duties in them vested.

Distribution,
how made.

SEC. 3. That in distributing the estate real and personal aforesaid, all the creditors of any such corporation shall, after paying the charges and expenses incident to the execution of the trusts and duties aforesaid, be paid, in proportion to their several claims, so far as the estate real and personal aforesaid will pay the said creditors, and if there be a residue in any case, it shall, after payment of the debts, be a trust for the holders of stock in such corporation, to be paid them, according to the value of the stock owned by them in proportionate shares. And in all cases after the discharge of all claims of a legal or equitable nature, continued in force by the provisions of this act upon the property aforesaid of such corporation in favor of the persons, the state of Indiana shall be the legal owner of the residue.

CHAPTER XXI.

AN ACT to regulate the mode of doing county business in the several counties in this state.

[APPROVED FEBRUARY 17, 1838.]

C'ty boards or-
ganized.

Three commis-
sioners to be e-
lected.

Proviso.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That there shall be and hereby is organized in each county in this state, a board of commissioners for transacting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively, on the first Monday in August next, as general elections are conducted; *Provided however*, in voting for commissioners, the ticket shall always show which is voted for, for first, second, or third district, and should there be two or more candidates in any one district, the person having the highest number of votes, shall be elected for such district; *Provided*, that nothing herein shall repeal the law constituting the justices of the peace, a board to do the county business in the counties of Parke, Owen, Clay, Bartholomew, Brown, Daviess, Hendricks, Harrison, Putnam and Decatur.

Term of service.

SEC. 2. At the first election in pursuance of this act, the person having the highest number of votes shall serve three years, the person having the next highest number of votes shall serve two years, and the person having the next highest number of votes shall serve one year; and thereafter annually, one commissioner shall be elected who shall serve three years, and each commissioner elected according to the provisions of this act, shall continue in office until his successor is elected and qualified; but if two or more persons shall have an equal number of votes as above, their grade shall be determined by lot by the clerk in the presence and under the direction of the returning officers.

SEC. 3. Each person elected as a commissioner, shall, on receiving a certificate of his election, take the oath or affirmation required by the constitution of this state, before some person legally authorized to administer the same; which oath or affirmation, being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with, and act as a member of the board, during the time for which he was elected.

SEC. 4. The commissioners thus elected and qualified, shall be considered a body corporate and politic, by and under the name and style of the board of commissioners of the county of —, and as such, by and under such name and style, may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court either of law or equity, and do and transact all business on behalf of their respective counties, that may be assigned them from time to time by law; and in all cases where their respective counties may have been injured in their goods, chattels, lands, tenements, rights, credits, effects, or contracts, such commissioners shall and may, by and under their corporate name and style, without setting out their individual names, bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such injury in the same manner that private individuals might or could do, and may in like way and manner, by and under their corporate name and style, be sued, by any person or persons having any manner of claims against such county.

SEC. 5. The board of commissioners shall meet at the court house, in each and every county, for the purpose aforesaid, or at the usual place of holding the circuit court in such county, on the first Mondays in January, March, May, September, and November, in each and every year, and may sit five days at each term, if the business of the county shall require it: *Provided however*, if the circuit court shall meet on any of the before mentioned days, the commissioners shall meet on the Monday preceding.

SEC. 6. The clerk of the circuit court shall, by virtue of his office, attend the meeting of the board of commissioners, and keep a record of their proceedings, and do such other business as he shall be required by law to do; and the sheriff of the county shall also, by himself or deputy, attend said board and execute their orders.

SEC. 7. Where money has been advanced by any clerk, or other county officer, for the use and benefit of his county pursuant to the requisitions of law, the board doing county business shall order such money, so advanced, to be first paid; and where there is any judgment or judgments against any county in this state, the board may in their discretion, order when and in what manner such judgment or judgments, shall be discharged, not inconsistent with the constitution of this state or of the United States, any law to the contrary notwithstanding. And when any county shall owe the commissioners for locating any

seat of justice therein, such claims shall be preferred to any other against said county; and the collector shall receive the said orders for commissioners' wages, and shall pay the same out of the first moneys that shall come to his hands, after such orders shall be presented to him, and the said orders accepted shall be a sufficient voucher in the hand of such collector for any claims the county may have against him, to their full amount.

When board is divided cause to be continue d. Vacancies in board, how filled.

SEC. 8. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be continued until the next meeting, before it shall be finally determined. When any vacancy shall happen in the office of commissioner, the circuit court of the county, or the two associate judges in vacation, shall appoint a suitable person or persons to fill such vacancy until the next annual election of commissioners, when such vacancy shall be filled by an election by the electors of the county.

SEC. 9. It shall be the duty of the board of commissioners at their May or any subsequent session, in each year, to receive and inspect the lister's books, and levy a county tax according to law, and cause their clerk to make out a duplicate for collection accordingly.

Seal and authentication.

SEC. 10. The commissioners of each county respectively, shall have and use a common seal, for the purpose of sealing their proceedings; and copies of the same, when signed and sealed by the said commissioners, and attested by their clerk, shall be good evidence of such proceedings, on the trial of any cause, in any of the courts of this state. The commissioners aforesaid, at their session in May, or when the circuit term prevents their meeting in November [May,] then at their first meeting thereafter, in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and have the same set up at the court house door, and at two other public places in their county respectively, and published in some newspaper in their county, if there be any; and if the said commissioners, or either of them, after accepting their appointment, shall neglect or refuse to do his or their duty, in office, he or they so offending, shall, on conviction by indictment before the circuit court of the proper county, be fined in any sum not exceeding one hundred dollars.

Statement of receipts and expenses.

Penalty on commissioner for neglect of duty.

SEC. 11. And it is hereby made the duty of the present boards doing the business of the several counties, to meet on the first Monday of May, eighteen hundred and thirty-eight, and lay their respective counties off into three equal commissioners' districts, if the same has not heretofore been done, numbered in numerical order, one, two, and three; and one commissioner shall be elected in each of said districts, by a vote of the whole county; and said districts when so laid off, may be altered once in every three years thereafter, if justice require it, and not oftener: *Provided however*, that nothing in this act shall be so construed as to affect the term of office of any commissioner heretofore elected. But when a vacancy shall occur in any board of commissioners, now in existence, the

Com'rs districts how formed.

Vacancy in all boards, how filled.

same shall be supplied by a person to be elected from one of such districts, in numerical order.

SEC. 12. That all the duties heretofore required of the boards doing county business, in the several counties in this state, and not included or otherwise directed in this act, be and the same is hereby made the duty of said commissioners, to do and perform, in the same manner as though it were named in this act.

Duties of county boards.

SEC. 13. The commissioners so elected and qualified, shall each receive two dollars per day, for each and every day that they may necessarily be employed in transacting county business; and said board of commissioners, when organized, shall possess the powers and authority heretofore given to the county board of justices.

Compensation.

SEC. 14. All suits, pleas, complaints, prosecutions, and proceedings, which may be pending in any court, to be tried for or against any board of justices, previous to the taking effect of this act, shall be prosecuted to final judgment and execution, in the same manner, as the same might have been done, had this not been passed; and all contracts either written or verbal, made by such board of justices, previous to the taking effect of this act, shall remain valid in law and equity, and suit may be thereupon brought, in the same way and manner as the same might have been, had this act not have been passed, with this difference, that the corporate name of the board of commissioners shall be used, instead of the name of the board of justices.

Proceedings before present boards, continued.

Contracts of present boards, remain valid.

SEC. 15. It shall be the duty of the clerks of the several boards doing county business, to keep fair books, wherein shall be kept the accounts of the county, to attest all orders issued by the board for the payment of money, and enter the same in numerical order, in a book to kept for that purpose; and shall copy into their said books the reports of the treasurer of the receipts and disbursements of their respective counties, and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of said clerks, to send a statement of the sum wherewith such collector stands charged, to the county treasurer.

Books, how kept, and co. orders, how issued.

Statement to co. treasurer.

SEC. 16. When any person has an attested county order in his own name, of a larger amount than his county tax, and is desirous to approximate [appropriate] a part of such order to the payment of such tax, he is hereby authorized to apply to the clerk of the board doing county business, whose duty it shall be to give to the holder of such order, and in exchange therefor, two or more attested county orders, making together the same amount with the original order, which shall be thereupon cancelled; and such clerk shall insert in every such order that the same with others, were so given in exchange to — for such original order, together with the number and amount of such original order; one of which orders shall be for the amount of his tax, and shall appear on its face to be intended for the payment thereof.

Co. orders may be divided.

SEC. 17. Whenever any person shall exhibit any claim against any county, for services rendered, for which the fund

Certain claims, how paid.

arising from the sale of lots, or otherwise, at the county seat, is especially appropriated, and those funds have been fully expended, it shall be the duty of the board doing county business, to give such claimant an order on the county treasury, for such sum as may be due to such claimant, to be paid out of any moneys not otherwise appropriated.

Collector shall receive county order.

SEC. 18. Every collector of county taxes, is hereby required to receive any regularly attested county order, made by the board doing county business, when the same may be tendered to him by any person in payment of such person's taxes, due such county.

Prohibited from taking co. order under par.

SEC. 19. No collector or other person doing county business, shall, either directly or indirectly, purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order for a claim allowed by the board doing county business, at any time during the period for which he may be elected, for a less amount than that expressed on the face of such order or demands against the county; and every person elected, or appointed to do county business, shall, before entering on the duties of his office, take an oath not to violate the provisions of this section; and any collector or other person doing county business, offending against the provisions of this section, on conviction thereof upon indictment or presentment, shall be fined for every such offence, in any sum not exceeding five hundred dollars.

Penalty.

Constables, inspector, fence viewers, overseers of poor, & supervisors of roads, how elected.

SEC. 20. That the qualified voters residing within the several townships, of the several counties of this state, shall meet together at the usual places of holding general township elections, on the first Monday in April next, and annually on the first Monday in April thereafter, for the purpose of electing as many constables in each township as there are justices of the peace within the same, and shall at the same time elect one inspector of elections for each township, two fence viewers, two overseers of the poor, and as many supervisors of highways as there are now or may hereafter be allotted to the respective townships by the proper board of commissioners; and in all cases of failure on the part of the qualified voters, to elect any such township officers, it shall be the duty of the board of commissioners, at the next session after the time such election should have been held, to appoint such officers to remain in office until the time for the next election. Nothing in this act shall be so construed as to affect or repeal the laws now in force, regulating the manner of doing township business, in the counties of Dearborn and Switzerland, and such other counties as have incorporated townships, except as to the election of township supervisor: *Provided*, that in the county of Lawrence all the township officers, with the exception of constables, shall be appointed by the board of commissioners, which board shall have power to appoint township officers at any term thereof for the purpose of filling vacancies that may happen by neglect, resignation, or otherwise.

Proviso as to Dearborn and Switzerland counties.

Duties of township officers.

SEC. 21. The above named township officers shall possess the same qualifications, and perform the same duties as are required of such officers by the laws now in force; the said town-

ship elections to be held and conducted in the same manner that general and township elections are now held and conducted, and the constables shall give such bond and security for the performance of their duty, as is now required by law.

SEC. 22. That the board of commissioners shall, so soon as may be after the first election held under the provisions of this act, divide the several townships within their respective counties, into as many highway districts as they may deem necessary; which districts shall be designated and numbered in numerical order, and recorded by the clerk of the board of commissioners. Where any vacancy shall happen in any of the township officers, the said board of commissioners shall, at their next session, appoint a suitable person or persons to fill such vacancy until the next annual election for township officers, when such vacancy shall be filled by an election of the electors of the township.

Highway districts.

Vacancy in township offices, how filled.

SEC. 23. That whenever any fence viewer, overseer of the poor, or supervisor of the highway is elected at an election held by the qualified voters of any township, the certificate of the election of such officer by the judges of such election, shall be given by them to the officer elected which shall be sufficient evidence of such election.

Certificates of election, how delivered.

SEC. 24. The circuit courts in counties where court houses shall not have been erected, shall be holden for the time being, at the place designated by law or selected by the court; and the boards of commissioners in such counties, shall with all convenient speed, proceed to the completion of a court house, jail, and other public buildings for the same, and keep the same in repair.

Court, court house, jail, &c.

SEC. 25. The board of commissioners, in their respective counties, at their first meeting after the passage of this act, or some subsequent meeting, shall appoint some fit person, as trustee of the public seminary of their respective counties, who, on acceptance of such appointment, shall take an oath of office, faithfully to discharge the duties of his said office according to law, and also give bond, payable to the state of Indiana, with two sufficient securities, in the penal sum of double the amount as near as may be, of the funds of the county seminary, conditioned for the faithful performance of the duties of his office, and for paying over all moneys, and delivering over all books, bonds, and papers, that may be in his hands as trustee, to his successor in office, when his term of service shall have expired agreeably to law; which bond shall be filed in the office of the clerk of the proper county, and shall not be void on one recovery, but may be put in suit from time to time, as often as occasion may require: *Provided however*, that this act shall in no way be construed, so as [to] interfere with or repeal any existing laws, respecting the county seminary of Switzerland county, or any other county, for which special laws relative to county seminaries have heretofore been enacted.

Trustee of seminary how appointed.

His oath & bond

Proviso.

SEC. 26. The board of commissioners, shall annually allow the clerk and sheriff of their county, such compensation for their extra services, as they may deem reasonable, not ex-

Allowance to clerk and sheriff.

ceeding seventy dollars each, which shall not include the extra services in making out the tax duplicates; but which annual allowance shall be considered a full compensation for all extra services, rendered the board of commissioners, the circuit court of such county, and the county, in any manner whatever.

Pound, pound-keepers and duties.

SEC. 27. The board of county commissioners in each and every county, shall cause a pound to be erected at or near the several court houses, with a good and sufficient fence, gate, lock, and key, where stray horses, mules, and asses may be kept, on the first day of the terms of the circuit courts; and the said board shall also appoint some fit person, who shall take charge of said pound, and keep the same in repair, and whose duty it shall also be to attend at the said pound, on the several court days, during the time such estrays are directed to continue there, with the key of the same; and the said board shall make such reasonable allowance for the erecting and keeping said pound as to them shall seem proper, to be paid out of the county treasury; and any person being appointed and undertaking the charge of said pound, and failing to discharge his duties agreeably to the directions herein expressed, shall forfeit and pay to the person injured, the sum of eight dollars for every such offence, with costs, recoverable before any justice of the peace of the county where such offence shall have been committed.

Penalty.

Appeals to C. C.

SEC. 28. From all decisions of the several boards of commissioners, there shall be allowed an appeal to the circuit court, by any person or persons aggrieved; and the person or persons appealing, shall take the same within thirty days after such decision, by giving bond with security, to the acceptance of the clerk of such board, conditioned for the faithful prosecution of such appeal and the payment of costs already accrued, and which may thereafter accrue, if the same shall be adjudged by the said court, to be paid by such appellant; and the clerk shall docket such appeal, with the cases pending in the circuit court, within twenty days after the taking of such appeal.

Who may appeal.

SEC. 29. That no person shall have the right of taking an appeal from any decision of such board unless he shall be a party to the record, or shall by an affidavit to be made and filed by him before and with the clerk of said board that he has a direct interest in the matter of controversy, and in all cases where an appeal is taken by any in vacation, whether he be a party to the record or otherwise, it shall be the duty of the appellant to cause a summons to be sued out, from the proper clerk's office, directed to the sheriff, notifying the appellee that an appeal has been taken from such decision, and requiring to appear and answer the same; which summons shall be executed and returned by the sheriff as other process, and if executed ten days previous to the first day of the next succeeding term of such circuit court, the same shall stand for trial at such term.

Notice to appellee.

Shall adopt rules

SEC. 30. That said board shall have the power, and it is hereby made their duty, to adopt such rules and regulations for their government, and for the transaction of business in the

same, as may be necessary and proper, not inconsistent with the laws and constitution of this state, and so far as the same may be practicable they shall conform to the rules adopted for the government and conducting of business in the circuit courts of their counties respectively.

SEC. 31. When bonds have been executed to said boards, or to any person or persons, body corporate or politic for the conveyance of ground for the use of a county seminary, the said ground shall be conveyed to the county wherein such seminary is situate for the use of the county seminary of said county forever.

Land for a seminary building to be conveyed to the county.

SEC. 32. Said board shall cause to be kept all records in relation to the county seminary or seminaries money, in separate books, to be by them provided for that purpose, and all records therein shall be signed by said board and attested by their clerk; receipt for seminary money may be recorded by the clerk in vacation.

Records relative to seminary how kept.

SEC. 33. That the boards doing county business in the several counties in this state, at their September session in each year, [shall] determine from among the several applicants the right of their students to the Indiana college, and when they have determined the same, they shall give to the student so selected, a certificate to that effect, signed by the president of such board and attested by the clerk, which certificate shall be the evidence to said institution of said student's right to enter said college.

Com'r may select students &c

SEC. 34. If no selection shall have been made at the September session as above provided, it shall be the duty of the board to make such selections at any other session, at which application shall be made, and it shall also be their further duty upon like application being made to supply any vacancy which may occur, of a student, in said college from their proper county, from time to time, so that there shall always be one student and no more from each county, in said college.

SEC. 35. That said boards if they find it expedient may appoint one or more commissioners or persons to expend the three per cent. fund belonging to their proper counties; and in all cases where commissioners are so appointed and money appropriated and placed in their hands to be expended on any public work, it shall be the duty of such commissioner to let such work to the lowest bidder therefor, upon giving due notice of such letting, unless otherwise expressly directed by such boards.

May ap't com'r to expend 3 per cent. fund.

SEC. 36. Said boards are hereby vested with discretionary powers to exempt any person from a poll tax, a road tax or from personal labor on public roads and highways when they shall find her [him] unable to pay such tax or perform such labor, owing to bodily infirmity, without regard to the sex of such person.

May exempt persons from taxation.

SEC. 37. The said board when sitting in their official capacity for the transaction of business, are hereby authorized to administer all necessary oaths or affirmations, or cause the same to be done by their proper clerk, to all or any person or persons, appearing before them as witnesses or otherwise.

May administer oaths.

Have power to
enforce order.

SEC. 38. They shall have full power and authority to preserve order and decorum in their courts, when sitting as such; to punish contempts by fine not exceeding three dollars, or imprisonment not exceeding twenty-four hours; may enforce obedience to all orders made by them by attachment or other compulsory process and when fines are assessed by them, execution shall issue therefor, which may be either a *capias pro fine*, or *feri facias* as such boards shall at the time direct, and shall be collected by the proper sheriff, and when so collected shall be paid over and appropriated as other fines are.

Allowances,
how made.

SEC. 39. That no allowance shall be made to any person or persons, unless the person or persons, in whose favor such allowance is to be made shall file with such boards doing county business a detailed statement of the items of charge, or claim for which such allowance is to be made, nor unless it shall appear to satisfaction that such detailed statement is correct, and the charges right; and for the purpose of ascertaining, the correctness of such statement, and that the charges are right and reasonable, the boards aforesaid shall have full power to take proof and examine under oath the claimant or claimants or other competent witnesses.

AN ACT to encourage the apprehension of horse thieves.

[APPROVED FEBRUARY 2, 1833.]

Co. comm'rs to
make allowance
for the apprehen-
sion of horse
thieves.

Be it enacted by the General Assembly of the state of Indiana, That whenever hereafter any horse thief may be apprehended and convicted of stealing any horse, mare, or mule, it shall be lawful for the board doing county business, of the county where such theft may have been committed, to allow the person or persons apprehending such felon or felons, any sum out of the county treasury not exceeding forty dollars.

This act to take effect and be in force from and after its passage.

CHAPTER XXII.

AN ACT establishing a County Treasurer.

[APPROVED JANUARY 8, 1831.]

Co. treasurer,
how appointed.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana.* That it shall be the duty of the several boards doing county business, of each county, at their first meeting after the first day of February annually, to appoint some respectable elector as county treasurer; who shall give bond and security to the satisfaction of said board, payable to the state, conditioned

Treasur's bond.

for the faithful discharge of the duties of his office; that he will account for all moneys which may come into his hands as county treasurer; that he will deliver unto his successor in office, all books, papers, documents, and other things which he may hold by virtue of his office; and that he will pay him the balance of all moneys due the county.

SEC. 2. It shall be the duty of the treasurer, to receive all moneys due and accruing to the county, to pay and disburse the same, on orders drawn by the board doing county business of the proper county, attested by their clerk, and not otherwise. The said treasurer shall keep a true and just account of all moneys received and disbursed, and hold and keep the same at all times ready for the inspection of said board, and shall at every term of said board, furnish them with a statement thereof, balanced to the first day of said term, shewing all the moneys received and disbursed by him since his appointment, or since his last settlement, and the balance remaining in his hands, together with the arrearages of taxes in the hands of the collector. He shall moreover, once in every year, settle his accounts with the said board, and produce his vouchers, which being allowed, shall be cancelled by them, and retained and filed by the clerk of said board.

Treasurer to re-
ceive and dis-
burse money &c.

Keep accounts.

Treasurer's to
rep't to co. b'd.

Treasurer an-
nual settlement.

SEC. 3. It shall moreover be the duty of said treasurer, so soon as he shall have received from the clerk of the circuit court, a statement of the amount of taxes put into the hands of the sheriff or collector of his county, or of any of his predecessors, and which shall not have been accounted for, forthwith to proceed to collect from such delinquent, his securities, heirs, executors, or administrators, the sum or sums in arrear, and due from him or them to the county, and in like manner, when such treasurer shall be furnished by the clerk, with a statement of jury fees received by any officer, he shall forthwith proceed to collect the same according to law.

Treasurer shall
prosecute delin-
quent collector
of revenue.

And for jury
fees collected.

SEC. 4. County orders properly attested, shall be entitled to a preference as to payment, according to the order of time in which they may be presented; and upon the receipt of money into the treasury, it shall be the duty of the treasurer to appropriate and set apart the same for the discharge of such county orders so presented: *Provided however,* that the county treasurers are hereby required to receive, of any collector, all county orders which such collector may have received in payment of county tax, without regard to the priority of the number of any such order or orders.

County orders,
how paid.

Proviso, as to
receiving coun-
ty orders.

SEC. 5. That the county treasurer, shall have for his services, one and a half per centum, for all moneys received, and one and a half per centum, for all moneys paid out for the county; excepting, however, moneys arising from the sale of lots at county seats, in which case he shall receive no more than two per centum for both receiving and paying out.

Treasurer's
per centum.

SEC. 6. The county treasurer, shall be subject to be removed from office, by the board doing county business, for neglect or misconduct in office, and in case of death, resignation, removal from office, or removal from the county, of any county treasurer, the said board, or a majority thereof, are hereby au-

Treasurer, how
removed from
office.

thorized and required to appoint some suitable person to fill said office in his place.

SEC. 7. In all cases where any person is desirous of vending any species of merchandize, in this state, which is not the product of the United States, it shall be the duty of such person, so wishing to vend any such merchandize, to pay to the county treasurer, the tax which may be laid on him, by the board doing county business, under the provisions of the act for assessing and collecting the revenue, and shall take the treasurer's receipt therefor, which receipt, such person shall forthwith file with the clerk of the circuit court, who shall give such person a license thereon accordingly in the following form, to-wit:

FORM OF LICENSE.

State of Indiana, county, set:

A B having this day produced to me, the county treasurer's receipt for the sum of , he, she, or they (as the case may be) is hereby authorized to vend merchandize in such county for the term of from the day of in the year ; which said license shall authorize such person to vend merchandize in such county, for the term therein named and set forth. But if the board doing county business shall not be in session, when such person may wish to commence vending such merchandize, it shall be lawful for such person, to give in, on oath, the amount of his capital, to such county treasurer, and pay to the treasurer the tax thereon, according to the rates laid down in said act for assessing and collecting the revenue, due respect being had to the time which will have to expire before the board will sit; and the treasurer shall give such person a receipt for the amount which may be so paid; which receipt such person shall forthwith deliver to the clerk of the circuit court, and such clerk shall thereupon give such person a permit to vend merchandize in such county, until such board doing county business shall sit, and no longer.

SEC. 8. That hereafter it shall be the duty of any person or persons, who may intend to exhibit to public view, or show, any animal or animals, wax work or other figures, rope or wire dancers, feats of circus riding, or sleight of hand, for gain, to apply to the treasurer of each county, where such exhibition is to be made, and pay to said treasurer, not less than five, nor exceeding ten dollars, at the discretion of the said treasurer, who shall receipt for the same; which receipt shall be presented to the clerk of the proper county, who is hereby required to make out his certificate under the seal of the said county, for which such clerk shall be entitled to receive as a fee therefor, the sum of fifty cents, which shall be a sufficient voucher for such applicant, or his agent, to show or exhibit such animal or animals, wax work or otherwise, during his stay in such county: *Provided*, that nothing in this act contained, shall prevent any board of trustees of any incorporated town, from taxing such exhibitions, agreeably to their corporate laws and ordinances, passed in pursuance thereof.

SEC. 9. All taxes arising from tavern licenses or otherwise, shall be paid to the county treasurer.

SEC. 10. All sheriffs, coroners, constables, clerks, county treasurers, collectors, assessors, and justices of the peace, shall be required, and it is hereby made their duty, to cause to be prosecuted, all who may violate the provisions of this act.

Sheriffs, collectors, &c. shall prosecute under this act for violations.

CHAPTER XXIII.

AN ACT organizing Circuit Courts, and defining their powers and duties.

[APPROVED JANUARY 24, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That this state shall from time to time, be divided into circuits, as circumstances may require; and in each and every county, within each of the said circuits, there shall be a circuit court, which shall be holden at such times and places, as are, or may be fixed by law. The said courts so holden in each county, shall be called and styled — circuit court, according to the name of the county in which it shall be holden; and shall have a seal, to be devised by the court, who shall cause a description thereof to be recorded.

State to be divided into cts.

Style of court.

Sale.

SEC. 2. Each circuit court shall consist of one president judge, and two associate judges, who shall be elected and commissioned in the manner provided by the constitution, and who shall, before entering upon the duties of their respective offices, take an oath or affirmation, similar to that which is required to be taken by the judges of the supreme court; a certificate of which oaths shall be endorsed on their respective commissions, and a copy thereof filed, that of the president, shall be filed in the office of the secretary of state, and that of the associate judges, in the clerk's office of the county for which they shall have been elected.

Pres't and two associates.

Their oath.

SEC. 3. The circuit courts, organized by this act, shall be, and they are hereby made courts of record, and shall have jurisdiction in each and every county throughout the state, in and over all crimes and misdemeanors, of every name and description, which shall be committed within their jurisdiction; and shall and may hear and determine the same, and pronounce sentence, and award execution, according to law; and shall moreover have original jurisdiction in all causes, matters and things, at law and in chancery; and shall have full cognizance, of all actions, real, personal, and mixed, in their respective circuits, to issue writs of *mandamus*, *habeas corpus*, and all other writs, necessary to carry these powers into effect, according to the course of common law, and the usages of courts, not inconsistent with the constitution and laws of this state, and proceed thereon to final determination, according to law.

Co. courts, c'ts of record.

Jurisdiction of c. courts in law and chancery.

Judges may issue writs in vacation.

Habeas corpus.

Injunction, ne exeat, &c.

J'dgs may take recogn'ces &c. payable to state.

Recog's where to be returned.

Process iss. to other co's, on forfeited recog's

Original process issuable to other co's on a crim'l charge.

Subpœnas.

Commission to take depositions

Style of process. How tested.

SEC. 4. The said presidents, in their respective circuits, and the said associate judges, or either of them, in their respective counties, shall have full power and authority, either in or out of court, to issue writs of *habeas corpus*, and proceed to trial thereon, and hear and determine the same according to the rules of the common law. And the said presidents, in their respective circuits, or the two associate judges of any of the said courts, in their respective counties, shall have power in vacation, to grant writs of *ne exeat* and *injunction*, and to make all such interlocutory orders, as may become necessary in the progress of a cause, under such restrictions and regulations, as are, or may be prescribed by law. The said presidents and associate judges, or any of them, shall have full power and authority, both in and out of court, to act as conservators of the peace, and to take all manner of recognizances and obligations, which shall be in the name of, and made payable to the state of Indiana; and all recognizances for any offence or suspicion thereof, or for the peace, good behaviour, or appearance, which shall be taken by the said judges, or either of them, out of court, shall be returned to the next circuit court, to be holden in the county where the same is or may be taken: and the said circuit courts, or any of them, shall have full power and authority to issue process into any county in this state, against any person or persons, who may have forfeited, or hereafter may forfeit, any such recognizance or obligation, and proceed according to law, to levy and collect the same, and when collected, to order the same to be paid over and disposed of according to law.

SEC. 5. To the end that all persons indicted or outlawed, for felonies or other offences, in one county, who shall remove into, or dwell in another county, may be brought to justice in the proper county where the offence was committed, it is hereby directed, that the said courts may issue their writ or writs or any other legal process, or any one of the judges thereof, in vacation, may issue his warrant or warrants, or any other legal process to all or any of the sheriffs, or other proper officer or officers of said county or counties, to take such person or persons indicted or outlawed; and it shall also be lawful for the said courts, to issue subpœnas and other process, to any county in this state, for summoning or bringing any person or persons before them, to give evidence, in and upon any matter examinable and triable before them or either of them, under such penalties as are or hereafter may be provided by law, with respect to such process. The said courts shall likewise have power and authority, as often as necessity may require, to issue commissions for the examination of witnesses, agreeably to the regulations which are, or hereafter may be established by law.

SEC. 6. All writs and process, issuing from and out of said courts, shall run in the name of the *state of Indiana*, and bear test in the name of the clerk who issued the same, be dated the time they issue, and made returnable according to law.

SEC. 7. There shall be no discontinuance of any suit, process, matter or thing, returnable to, or pending in any of the said courts, although a quorum of judges shall fail to attend at the commencement, or any other day of the term; but if such number shall not attend, as shall, under the provisions of the constitution, be authorized to hold a court, any judge of said court, or sheriff attending the same, may adjourn the said court for two days successively, and if a quorum shall not attend on the third day, or having attended one day shall fail to attend on a subsequent day of the term, the court shall stand adjourned until court in course.

SEC. 8. The associate judges of the circuit courts of this state, shall receive for their services, two dollars per day, while attending the court thereof in that capacity, to be paid by the respective counties in which they reside: *Provided however*, that no associate judge, shall in any wise be entitled to be allowed such compensation, but upon producing the certificate of the clerk of the proper circuit court, certifying the number of days such associate judge may have attended the court; and in case he has not received compensation therefor, to certify that additional fact.

SEC. 9. All allowances hereafter made by the circuit courts, to the sheriffs, for extra services or fuel, or to any other officer or person, for services rendered during the term of the court, shall be entered upon the records thereof, and the specific services named, for which the allowances are so made.

SEC. 10. If a court shall not sit in any term, or have not continued to sit the whole term, or before the end of the term, shall not have heard and determined all matters ready for their decision, all such matters and things depending in said court, and undetermined, shall stand continued until the next succeeding term.

SEC. 11. The said circuit courts shall have full power and authority to administer all necessary oaths and affirmations, and punish by fine and imprisonment, all contempts of their authority, in any cause or examination before them.

SEC. 12. Whenever any writ of execution, shall be illegally issued by the clerk of any circuit court, or his deputy, the president judge of such circuit, on application of the party against whom the same is issued, in vacation, at his chambers, may, on reasonable notice of the time and place of such application having been given to the opposite party, his agent, assignee or attorney, together with the points of exception relied on, order such writ of execution to be called in, and that the officer having such writ, shall forthwith desist from proceedings on the same; and if neither such opposite party, his agent, assignee, or attorney, resides within the state, such notice may be served by a copy thereof being posted up in such clerk's office, for a reasonable length of time, before such application: *Provided however*, that such procedure shall not take from the party aggrieved, his remedy by bill and writ of injunction, in cases where such remedy has been heretofore afforded by courts exercising chancery jurisdiction.

No dis'nce for want of a quorum of judges.

But judge or sh'ff may adj'n court.

Compensat'n to associate judges.

Their voucher for services.

Allowances to sheriff's, &c.

How certified causes undetermined are continued.

C. cts. may administer oaths, and punish for contempts.

Pres't j'dgs may grant restraining orders, &c. Notice of such application to be given.

Offic'r to desist.

Notice by copy.

Proviso, that right to rejoin shall remain.

Proceed'gs of
each day to be
read.

SEC. 13. For the purpose of preventing error, in entering the judgments of said courts, it shall be the duty of the clerks, to draw up each day's proceedings at full length, and the same shall be publicly read in open court, and corrected when necessary; after which they shall be signed by the president judge, and in case of his absence, by the two associate judges; and no proceedings or judgment, of any of the said courts, shall be of any force or be considered valid, until the same are so read and signed.

AN ACT to amend an act entitled an act organizing Circuit Courts, and defining their powers and duties.

[APPROVED FEBRUARY 15, 1838.]

Whereas, it often happens that reasons exist to make it a matter of delicacy for a president judge of a circuit to preside on the trial of a particular cause, although he may not be legally disqualified; and whereas, it is desirable that a president judge of a circuit should not be subjected to the odium arising from a resistance of temporary popular excitement, which may sometimes become his duty; and whereas, it is desirable to avoid the transfer of chancery cases to a neighboring circuit, or to the supreme court, for the cause of the interest or prejudice of a circuit judge; and whereas, the president judge is frequently of council for parties in causes which afterwards come up for trial before him; and whereas, it is proper that a general system of practice should prevail in the circuit courts throughout the state, which may be effected by the means pointed out herein; therefore,

Preamble.

Pres't judges
may hold courts
in other circuits.

Be it enacted by the General Assembly of the State of Indiana, That any president judge of a circuit in this state shall be competent to preside in and hold any circuit court within any county of this state, the president judge of the circuit to which such county may belong being absent; and said president judge so holding such court may continue the session thereof, during any entire term, or during the progress of any one trial or for any less time.

This act to take effect and be in force from and after its passage.

AN ACT regulating the Courts in the first and sixth Judicial Circuits.

[APPROVED FEBRUARY 17, 1838.]

1st circuit.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the counties of Parke, Vermillion, Fountain, Warren, Montgomery, Clinton, Tippecanoe, Carroll, White, and Jasper shall form the first judicial circuit.

SEC. 2. The courts in the first judicial circuit shall be holden as follows, to-wit: In the county of Parke on the last Mon-

days of February and August, and to continue two weeks; in the county of Vermillion on the Mondays succeeding the courts in Parke, and to continue two weeks; in the county of Fountain, on the Mondays succeeding the courts in Vermillion, and to continue two weeks; in the county of Warren, on the Mondays succeeding the courts in Fountain, and to continue one week; in the county of Montgomery, to commence on the Monday succeeding the courts in Warren, and to continue two weeks; in the county of Clinton, to commence on the Mondays succeeding the courts in Montgomery, and to continue one week; in the county of Tippecanoe, to commence on the Mondays succeeding the courts in Clinton, and to continue three weeks; in the county of Carroll, to commence on the Mondays succeeding the courts in Tippecanoe, and to continue two weeks; in the county of White, to commence on the Mondays succeeding the courts in Carroll, and to continue four days.

Time of holding
courts in 1st c't.

SEC. 3. That the circuit courts in the county of Jasper, ^{In Jasper co.} after the same shall be organized, shall be holden immediately succeeding the courts in White county, and shall continue two days if the business thereof shall require it, and the county of Newton is hereby attached to the county of Jasper for judicial purposes.

SEC. 4. That the circuit courts in the several counties com- ^{In 6th circuit.} posing the sixth judicial circuit, shall be holden annually on the days and times following, to wit: In the county of Wayne, on the fourth Mondays in February, June, and August; in the county of Union, the second Mondays in March and September; in the county of Fayette, on the fourth Mondays in March and September; in the county of Rush, on the second Mondays succeeding the commencement of the courts in the county of Fayette; in the county of Henry, on the second Mondays succeeding the courts in the county of Rush; in the county of Delaware, on the second Mondays succeeding the commencement of the court in the county of Henry; in the county of Grant, on the second Mondays succeeding the commencement of the courts in the county of Delaware; in the county of Randolph, on the Mondays succeeding the courts in the county of Grant; and in the county of Jay, on the second Mondays succeeding the commencement of the court in Randolph; and the several courts in the said sixth judicial circuit, to be holden as above, shall each sit six days if the business require it, except in the counties of Wayne, Union, Fayette, Rush, Henry, Delaware, and Randolph, where the courts shall each sit twelve days if the business require it; and the county of Blackford shall be attached to the county of Jay for judicial purposes: *Provided,* that nothing in this act shall affect the circuit courts at their present spring term, except the county of Randolph be allowed twelve days at the first term if the business require it.

SEC. 5. Whenever it shall happen that the day fixed by law for the holding of the sessions of the courts doing county business shall fall within the periods prescribed by this act, for the holding of sessions of the circuit court, then shall the <sup>When comm'rs
courts fall on
same days of
circuit court.</sup>

sessions of the courts doing county business be accelerated to the Monday but one previous to the sittings of the circuit court; and when it shall so happen that the times fixed by law for the sessions of the probate court shall fall within the period prescribed by this act for the session of the circuit court then the session of the probate court shall be postponed to the Monday subsequent to the time hereby fixed for the termination of such circuit court.

Process, how
returnable.

SEC. 6. All processes made returnable unto any of the circuit courts of the respective counties aforesaid to the times heretofore fixed for the holding of the sessions thereof, shall be and the same are hereby declared and made returnable to the first days of the terms of said courts as fixed by this act; and all parties, persons, and officers are hereby required to take notice of the changes of the terms of the courts doing county business and probate courts which may be produced, and all the transactions of business and the discharge of all duties official or personal shall be accelerated or postponed to the time or times to which by this law the terms of such courts may be accelerated or postponed.

SEC. 7. All laws or parts of laws coming within the purview of this act, be and the same are hereby repealed.

This act to be in force from and after the passage thereof, and shall be published in the Indiana Journal and Farmer.

AN ACT for the formation of the Second and Third Judicial Circuits, and providing for holding courts therein.

[APPROVED FEBRUARY 17, 1838.]

2d circuit.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the counties of Floyd, Clark, Scott, Jackson, Lawrence, Washington, Harrison, and Orange, shall form the second judicial circuit.

3d circuit.

SEC. 2. That the counties of Franklin, Decatur, Ripley, Jennings, Jefferson, Switzerland, and Dearborn, shall form the third judicial circuit.

In 2d circuit.

SEC. 3. That the courts in the second judicial circuit shall be held as follows, viz: In the county of Scott, on the last Mondays in February and August; in the county of Jackson, on the first Mondays of March and September; in the county of Lawrence, on the second Mondays of March, July, and September; in the county of Orange, on the third Mondays of March, July, and September; in the county of Washington, on the fourth Mondays of March and September; in the county of Harrison, on the second Mondays of April and October; in the county of Floyd, on the fourth Mondays in April, July, and October; in the county of Clark, on the second Mondays of May and November: In the counties of Washington, Harrison, Floyd, and Clark, the court shall sit twelve days at each term, and in the other counties of said circuit, six days at each term, if the business thereof requires it: *Provided*, that after the first day of August, 1838, the said circuit court shall be held in the

county of Scott, on the third Mondays in August and February, and continue in session six days if the business requires it; and in the county of Jackson, on the fourth Mondays of August and February, and continue in session twelve days if the business requires it.

SEC. 4. That the courts in the third judicial circuit court ^{In 3d circuit.} shall be held as follows, viz: In the county of Franklin, on the third Mondays in February and August; in the county of Decatur, on the first Mondays in March and September; in the county of Ripley, on the second Mondays of March and September; in the county of Jennings, on the third Mondays of March and September; in the county of Jefferson, on the fourth Monday of March, the second Monday in June, and the fourth Monday in September; in the county of Switzerland, on the second Mondays of April and October; in the county of Dearborn, on the fourth Monday of April, the third Monday of July; and the fourth Monday of October: In the counties of Jefferson, Switzerland, Dearborn, and Franklin, the court may sit twelve days at each term if the business requires it; and in all the other counties of said circuit, six days at each term, if the business requires it.

This act to take effect and be in force from and after its passage.

AN ACT fixing the time of holding courts in the Fourth Judicial Circuit.

[APPROVED, FEBRUARY 17, 1838.]

Be it enacted by the General Assembly of the State of Indiana. ^{In 4th circuit.} That the times of holding courts in the fourth judicial circuit, shall henceforth be as follows: In the county of Dubois, on the third Mondays of February and August; in the county of Pike, on the fourth Mondays of February and August; in the county of Gibson, on the first Mondays of March and September; in the county of Posey, on the second Mondays of March and September; in the county of Vanderburgh, on the fourth Mondays in March, September, and June; in the county of Warrick, on the second Mondays of April and October; in the county of Spencer, on the third Mondays of April and October; in the county of Perry, on the fourth Mondays of April and October; in the county of Crawford, on the Mondays succeeding the courts in Perry county: And the said circuit courts shall sit in all the counties in said circuit six days if the business requires it, except in the counties of Posey and Vanderburgh, in which the said courts shall sit twelve days if the business requires it.

This act to take effect from and after the first day of June next.

AN ACT changing the time of holding courts in the counties of Hancock, Morgan, Hendricks, Boone, Hamilton, and Marion.

[APPROVED FEBRUARY 15, 1838.]

In 4th circuit. SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the circuit courts of the following counties of the fifth judicial circuit, shall, for the year 1838, be holden as follows, to wit: In the county of Hancock, on the third Mondays of March and September; in the county of Morgan, on the fourth Monday of March and September; in the county of Hendricks, on the first Monday of April and October; in the county of Boone, on the second Monday of April and October; in the county of Hamilton, on the third Monday of April and October; in the county of Marion, on the Monday succeeding the courts in the county of Hamilton.

SEC. 2. The circuit courts of said counties shall each hold their sessions for a period of six days if the business thereof require it, except the county of Marion, the court shall hold its session for the period of three weeks if the business thereof require.

SEC. 3. Whenever it shall happen that the day fixed by law for the holding of sessions of the courts doing county business shall fall within the period prescribed by this act, for the holding of sessions of the circuit court, then shall the sessions of the courts doing county business be accelerated to the Monday but one previous to the sittings of the circuit court; and when it shall so happen that the time fixed by law for the sessions of the probate court shall fall within the period prescribed by this act for the session of the circuit court, then the session of the probate court shall be postponed to the Monday subsequent to the time hereby fixed for the termination of such circuit court.

SEC. 4. All processes made returnable unto any of the circuit courts of the respective counties aforesaid to the times heretofore fixed for the holding of the sessions thereof, shall be, and the same are hereby declared and made returnable to the first days of the terms of said courts as fixed by this act, and all parties, persons, and officers are hereby required to take notice of the changes in the terms of the courts doing county business and probate courts which may be produced, and all the transactions of business and the discharge of all duties official or personal, shall be postponed or accelerated to the time or times to which by this law the terms of such courts may be postponed or accelerated.

SEC. 5. All laws and parts of laws coming within the purview of this act be, and the same are hereby repealed.

This act to be in force from and after the passage thereof, and shall be published in the Indiana Journal and Indiana Democrat.

NOTE.—The courts in the county of Madison shall sit on the second Monday in February and August; in the county of Shelby, on the fourth Monday in February and August; in the county of Bartholomew, on the first Monday in March and September; in the county of Johnson, on the second Monday in March and September. See Acts of 1837, p. 63.

AN ACT to provide for the times of holding the Circuit Courts in the Seventh Judicial Circuit in the state of Indiana.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the various laws now in force in the state of Indiana in relation to the time of holding the circuit courts in the several counties composing the seventh judicial circuit in this state be, and the same are hereby declared to remain and continue in force, and that the circuit courts in the several counties in said circuit shall be holden conformably to said several acts, except in the county of Vigo, in which the said courts shall hereafter commence on the second Mondays in June and December of each year, and sit three weeks if the business thereof requires it.

SEC. 2. That all writs, subpoenas, and all other legal process whatever which have heretofore or which may hereafter issue from said court in said county of Vigo since its last term, shall be and the same are hereby made returnable to the first day of the next term of said court, to be holden under and by virtue of the provisions of this act.

This act to take effect and be in force from and after its passage.

AN ACT for the formation of the Eighth and Ninth Judicial Circuits, and fixing the time of holding courts therein.

[APPROVED FEBRUARY 19, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the circuit courts of the eighth judicial circuit shall be held as follows: In the county of Cass, on the third Mondays of February and August; in the county of Miami, on the first Mondays of March and September; in the county of Wabash, on the second Mondays in March and September; in the county of Huntington, on the third Mondays in March and September; in the county of Whitley, on the fifth Thursday in March and the fourth Thursday of September; in the county of Noble, on the first Mondays of April and October; in the county of DeKalb, on the second Mondays in April and October; in the county of Steuben, on the second Tuesdays in April and October; in the county of Lagrange, on the third Mondays of April and October; in the county of Allen, on the fifth Mondays of April and October; in the county of Adams, on the second Mondays of May and November; in the county of Wells, on the third Mondays of May and November.

SEC. 2. That the circuit courts of the several counties composing the ninth judicial circuit of the state of Indiana, shall be holden on the days and at the times following, to wit: In the county of Fulton, on the first Mondays of March and Sep-

tember; in the county of Marshall, on the second Mondays of March and September; in the county of Kosciusko, on the third Mondays of March and September; in the county of Elkhart, on the fourth Monday of March and September; in the county of St. Joseph, on the second Monday of April and the first Monday of October; in the county of Laporte, on the fourth Monday of April and the third Monday of October; in the county of Porter, on the second Monday after the commencement of the regular terms in Laporte; in the county of Lake, on the Mondays next succeeding the courts in the county of Porter: And the said circuit courts may each sit one week if the business thereof shall require it, except the circuit courts in the county of Elkhart, which may sit two weeks at the March term thereof, and the circuit courts in the counties of St. Joseph and Laporte, which may severally sit two weeks if the business thereof shall require it.

SEC. 3. The county of Starke is hereby attached to the county of Marshall for judicial purposes.

Jurors, how to serve. SEC. 4. The petit jurors summoned to attend at the spring term for the counties of Elkhart and St. Joseph circuit courts, shall serve as such jurors during the whole of said spring term if necessary.

Writs, &c. how returnable. SEC. 5. All writs, subpoenas, venires, rules, orders of court, recognizances, and all process whatsoever which may have issued from any circuit court in said circuits since the last sitting thereof, or which may hereafter issue previous to the taking effect of this act, in the several counties in said circuit, shall be deemed and taken and are hereby made returnable to the first day of the first term of the several circuit courts, to be holden by virtue of this act; and all suits, pleas, complaints, prosecutions, recognizances, actions, motions, rules, or other proceedings, or which hereafter shall be pending, prior to the taking effect of this act as aforesaid, shall be taken up and acted upon at the time of such court to be holden under this act, and be disposed of in the same manner as if no alteration had been made in the time of holding such courts.

Special term in Laporte county. SEC. 6. *And be it further enacted*, That the Laporte circuit court at the April term thereof, in the year one thousand eight hundred and thirty-eight, and at any regular term thereof, may in their discretion, if they deem it necessary, order that a special term of said Laporte circuit court be holden for said county of Laporte, on the third Monday in June, in the year eighteen hundred and thirty-eight, to try and determine civil causes and actions, which may at the said April term be undisposed of for want of time to try the same, or which may at the said April term be subject to trial and which may be continued over from said term, and no process other than subpoenas for witnesses and a writ *venire facias* for jurors shall be returned to said special term, and no cause or action either civil or criminal, except as aforesaid, shall be tried at said special term without the consent of the parties thereto.

How regulated. SEC. 7. Said circuit court at said special term, may continue its sittings for any length of time necessary to dispose of the

business coming before it by virtue of this act, and all business done and transacted by said court at such special term, shall have the same binding, force, and effect on the parties thereto as though the same had been done and transacted at a regular term thereof; and said circuit court at said special term, shall, in all things, be governed and regulated by the laws governing and regulating circuit courts in this state; and all executions which may issue on judgments rendered at said special term prior to the first day of the next regular term thereafter, shall be made returnable on the first day of the said next regular term thereafter; and executions on said judgments, which may be issued subsequent to the first day of said next regular term, shall be made returnable as is now required by law for the return of executions.

SEC. 8. The clerk of said Laporte circuit court shall make up a docket of such causes as may be triable at said special term within three weeks after the rising of said court, at which any special term may be appointed; and the said clerk shall also, at the request of either party to any action set for trial at said special term, issue subpoenas for witnesses, returnable to said special term in the same manner as is now provided by law for the issuing and returning subpoenas. Clerk to make a docket.

SEC. 9. Should said circuit court order any such special term of said circuit court to be holden as aforesaid, then and in that case, the clerk of the said circuit court at the regular term last aforesaid, shall in the presence of the said circuit court, draw from the list of taxable property in said county, twenty-four good respectable freeholders or householders, to serve as petit jurors for and during said special term, and the clerk and circuit court in selecting said jurors, shall be governed by the act entitled "an act to regulate the mode of summoning and empanelling grand and petit jurors," approved January the 29th, 1831; and the clerk shall issue a *venire facias* for such jurors as may as aforesaid be selected, returnable to the first day of the said special term, and the sheriff shall serve and return the same in the same manner and subject to the same rules and regulations as are provided by the act aforesaid; and any person or persons being summoned as such jurors, who shall fail to appear and attend to their duties so required by said *venire facias*, shall be subject to the same penalties as are by said act imposed on delinquent jurors. Jurors, how drawn.

This act to be in force from and after its passage and publication in the Indiana Journal.

AN ACT to provide for holding a term of the Circuit Court in the county of Cass.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the circuit court in and for the county of Cass, if in the sound discretion of the president and associate judges thereof, it shall be considered that the public interest re- Special session in Cass co. may be holden.

quire it, may hold a session on the third Monday of May and continue from day to day as long as the business thereof shall require.

Jurors, how drawn.

SEC. 2. That the commissioners of said county of Cass shall at their March session select as is required by law, twenty-four jurors, to serve as grand jurors, and thirty-six persons as petit jurors, to serve as such during said May session of said circuit court; and the clerk shall issue a venire or veniris, and the sheriff serve the same as they are required to do at the regular term of said courts.

Process, how returned.

SEC. 3. All writs, processes, summonses, subpoenas, motions, executions, and all other papers of whatsoever description that are issued after the February term of the Cass circuit court and made returnable at the next term of said circuit court, shall be, and hereby are made returnable at the May session of said court; and the said court at said May session shall be governed in all matters and shall dispose of all business as if said May session was a regular term of said court.

CHAPTER XXIV.

AN ACT to organize Probate Courts, and defining the powers and duties of Executors, Administrators, and Guardians.

[APPROVED FEBRUARY 17, 1838.]

Probate judge, how elected.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be organized in each county within this state a probate court, consisting of one judge, to be elected septennially by the qualified voters of each county, on the first Monday in August next before, or at the time such office may become vacant, by the expiration of the term of service of the present or any future incumbent thereof, or next after the same may become vacant from any other cause than the expiration of the term of service of such incumbent; and such judges shall respectively hold their offices for the term of seven years, and until their successors may be chosen and qualified, if the same shall so long behave well, and shall be commissioned by the governor accordingly; and if the said office shall become vacant, other than by the expiration of the term of service of the incumbent thereof, it shall be the duty of the clerk of such court to certify, under the seal of such court, such vacancy to the governor, who shall thereupon fill such vacancy, by appointing some suitable person such judge as aforesaid, to serve until the first Monday in August thence next to come, and until his successor be chosen and qualified, if he shall so long behave well.

Vacancy, how filled.

SEC. 2. That no person shall be either elected, commissioned, or appointed such judge of the probate court as aforesaid, until he shall first have obtained a certificate, from some

one of the judges of the supreme court or from some one of the president judges of the circuit courts, that he is qualified to discharge the duties appertaining to the said office of probate judge: *Provided*, that such judge of the supreme or circuit court, in the examination hereby authorized, shall have a due regard to the legal qualifications of such person: *And provided also*, that nothing in this section contained, shall be construed, so as to require any judge of said probate court to be a professional character.

SEC. 3. That no judge of the probate court shall enter upon the discharge of the duties of his office, until he shall first have taken an oath or affirmation, similar to that which is taken by the judges of the supreme court, which oath or affirmation, shall be endorsed on the commission of such judge, and a copy thereof, certified by the officer administering the same, shall be filed in the office of the clerk of the circuit court of the proper county.

SEC. 4. The said courts when organized, shall be called and styled "The probate court of —," according to the name of the proper county, for and within which the same may be so organized; and the same shall be, and are hereby declared courts of record, and in the several counties for and within which the same may be organized, shall have original and exclusive jurisdiction in all matters relating to the probate of last wills and testaments, granting of letters testamentary, and letters of administration, and of guardianship—the settlement and distribution of decedent's estates, the examination and allowance of the accounts of executors, administrators, and guardians.

SEC. 5. And the said probate courts respectively are hereby invested with concurrent jurisdiction in all suits at law, or in equity upon all demands or causes of action in favor of or against heirs, executors, administrators, or guardians, and their securities, and representatives where the amount in controversy shall exceed the sum of fifty dollars; and in the partition of real estate; and the assignment of the widow's dower; and the appointment of a commissioner to make a deed on a title bond given by deceased obligors; and to authorize the guardian to sell and convey any real estate in order to reduce the same to assets for the purpose of paying the debts against any decedent's estate, and to provide for the wants or interests of any minor, idiot, or lunatic; and the said probate courts in exercising the powers and jurisdiction hereby granted shall be governed by the same laws and restrictions that appertain to the circuit courts, and in the same way and for that purpose shall have power to issue all writs, orders, citations, or other process necessary to bring a party into court, or to carry the orders, judgments, and decrees of such court into effect, or to do execution thereon, and all process issuing out of such courts, and all orders, and decrees made by such courts, shall be executed, returned and enforced in the same manner, and under like penalties as the process, orders, and decrees of the circuit courts, are, by law to be executed, returned, and enforced; and

the said courts shall have all the powers of courts of chancery in coercing answers and making up issues, punishing contempts, taking bills, petitions, answers, or other pleadings as confessed, and enforcing the same according to the laws of Indiana; and shall have power to grant changes of venue upon the conditions and restrictions according to the usage and custom of courts of law in this state, and shall exercise all the powers of courts of law and chancery necessary to carry this provision into full and complete effect. And the said courts shall respectively have a seal to be devised by the court, who shall cause a description thereof to be recorded among their records.

SEC. 6. That in all cases cognizable in the said probate court, in which the judge of any of such courts may, or shall have been interested, either as counsel, administrator, executor, guardian, heir, legatee, or otherwise, the same and all business relating thereto, shall be transacted, commenced, heard, and determined by and before the circuit court of the same county; which court shall have full and complete jurisdiction thereof, being governed in all respects by the provisions of his act.

SEC. 7. The clerk of the circuit court of the proper county, and the sheriff of said county, or other officer acting as such, shall be officers of the court of probate, each in his proper capacity. It shall be the duty of the clerk to keep a fair record of all rules, orders, judgments, decrees, and other proceedings of the court, separate from the records of the circuit court, in books which he shall provide at the expense of the proper county. It shall be the duty of the sheriff, to attend the said court, during the session thereof, and to serve all orders, and process emanating from the probate court of any county in the state. And the said clerks shall moreover keep a docket of all contests, suits, motions, or other proceedings pending, and all letters testamentary and letters of administration, until the same shall be finally settled, and shall keep a complete record book in which he shall from time to time make a complete record of such suits, motions and proceedings as may be finally ended and determined.

SEC. 8. That in any proceeding by this act authorized to be prosecuted in the probate court, in which the parties may make an issue, or issues in fact, or in which according to the usages and practice of courts of chancery, it may be proper that an issue or issues of fact be made, the said probate court shall be authorized to order such issue or issues to be made and to be docketed for trial at the term of the court next after the making thereof, and such issues as well as all issues in fact made in the said court by the averments of the parties, in which the parties are, by the law of the land entitled to a trial by jury, having been docketed or coming on for trial as aforesaid, a *venire* shall issue directed to the proper officer, directing him to summon a jury of twelve men to be named therein, chosen by lot by the clerk of said court, from the panel of the traverse jury, selected for the term of the circuit court of the proper county then last holden therein; and such jurors, when summoned shall be compelled to attend, under the same penal-

May grant
change of venue

Seal.

Where circuit
cts. shall have
jurisdiction.

Clerk and sh^l
proper officers
of the court.

Cl^k shall keep
a record.

Sheriff's duty.

Cl^k to docket
suits.

Complete record

Cl^k shall docket
issues for trial.

Trial by jury.

Venire.

Jury compelled
to attend.

ties provided to secure the attendance of jurors in the circuit courts; and for their attendance shall receive the same compensation which by law is allowed for their attendance in the circuit courts, payable in the same manner; and if owing to the non-attendance of jurors or other cause a jury to try such issues cannot, or may not be obtained in the manner above prescribed, the same or any part thereof may be summoned as at common law, and the parties to such issues shall be entitled to challenge jurors empanelled to try the same in the same manner, and to the same extent, and for the same causes that jurors are, and may be challenged in the circuit courts, and decree judgments, new trial, arrest of judgment, or a *venire de novo*, shall be rendered, or awarded upon the verdicts of such juries according to the usages, and practice of the circuit courts in this state in similar cases, as the same may be authorized by law.

SEC. 9. That witnesses necessary for the parties in the probate court may be summoned as they are or may be in the circuit courts, and for non-attendance they shall be liable to the same penalties to which they are or may be liable in the circuit courts, and depositions may be taken for the same reasons, and under the same circumstances, and admitted as evidence under the same rules as in the circuit courts.

SEC. 10. That process issuing out of the probate court shall be tested in the manner as by the clerk of the said court, and with the exception of subpoenas for witnesses, shall be sealed with the seal thereof; writs of summons, or of citations, issuing as a matter of course, upon the filing of a petition or complaint, or otherwise. Writs of scire facias and subpoenas for witnesses, shall issue upon the filing of said petition or complaint, or institution of other proceeding, as may be required, or contemplated by this act, upon the order of the party having a right thereto. Writs of venire shall be issued by the clerk when necessity may require or the court order the same. Writs of attachment shall issue only when ordered by the court, and all such process shall be returnable to the first day of the term next succeeding the issuing thereof unless otherwise ordered by the court; and the jurisdiction of the said court in regard to the issuing of process shall be co-extensive with the state, and the sheriff or other officer of any county in the state, shall receive, execute, and return the same; and in all cases, not specially otherwise provided for in this act, if a summons or citation be executed upon a party twenty days before the return day thereof, such summoned or cited party failing to appear, shall be liable to suffer judgment or decree by default, or to attachment for contempt, as the case may require, and the usages and practice of the circuit courts in similar cases warrant.

SEC. 11. That the several probate courts shall have the same power and authority to execute their judgments, orders, and decrees that the circuit courts may have either by execution, *fieri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or by attachment to be issued, executed, and returned,

Compensation
of jury.

Jury may be
summoned as at
common law.

Venire de novo
in case of new
trial.

Witnesses may
be summoned.

Depositions may
be taken.

Writs how and
when to issue.

Judg^t by de-
fault when par-
ties fail to ap-
pear.

Jurisdiction in
issuing process
co-extensive
with the state.

Shall have the
power of the cir-
cuit to execute
decrees, &c.

Stay of execution

according to the laws of the state regulating such writs issuing out of the circuit courts, and such judgment and decrees of the probate court shall be subject to the same stay, or replevy of execution, with judgments, and decrees of the circuit courts, to be taken in the same way, for the same length of time, and with the same effect, and the said probate court shall order, decree, and enforce the payment of costs according to the usages, and practices of the circuit courts.

Appeals to supreme court.

Supreme court, how to proceed.

May take appeals to circuit court.

Circuit court shall hear and determine causes

When president judge interested, &c.

Administration, &c. when granted.

SEC. 12. That all persons who may feel themselves aggrieved by any decree, judgment, or order of the probate court, may for the purpose of correcting any error in the same, take the same to the supreme court by appeal or writ of error, in the same way and manner, and subject to the same laws, rules, and regulations, by and under which judgments and decrees of the circuit courts, are, or may be taken to the supreme court, and the supreme court shall have the same power over, and jurisdiction thereof, and shall proceed upon, and determine in the same way and manner as if the judgment, order, or decree complained of had been rendered in the circuit court, and such writs of error, and appeals, and supersedeas thereon, shall be granted in the same manner, and have the same force and effect as if prosecuted upon or granted to effect a judgment, decree, or order of the circuit court: *Provided however*, that it shall be at the election of any person or persons interested, to take up any order, judgment, or decree of the probate court, to the circuit court of the proper county, by appeal or writ of error, in the same manner, and under the same rules and regulations as are prescribed in taking cases from the circuit court to the supreme court, and the several circuit courts shall have jurisdiction thereof, and hear and determine the same according to the usages of courts, and the rights of the parties: *And provided further*, that when any person shall take up any order, judgment, or decree of the probate court by appeal or writ of error, to the circuit court aforesaid, and it shall appear that the president judge of said circuit court is interested in the event of said order, judgment, or decree, as attorney or otherwise, the clerk of said circuit court shall certify a transcript of the same to the supreme court, who shall hear and determine the same, as other appeals, and writs of error taken to said supreme court.

SEC. 13. That all letters testamentary, and letters of administration shall be granted in the county where the testator, or intestate had his usual place of residence at the time of his death, or where the deceased had fixed places of residence in more than one county, then in either; and if any decedent may have been a transient person, such letters shall be granted within the county in which such decedent may have deceased, or within which the greater part of his personal property may be found at the time of the granting of such letters testamentary, or of administration, or in the county where such person last resided.

SEC. 14. When any person shall die intestate, or having made a will, and the executor shall refuse to prove the same

or qualify as such executor, administration shall be granted to the widow, and after her to the next of kin, or to both, at the discretion of the court, upon their complying with the requisitions of his act; and upon the failure of the widow, and next of kin to make application or to procure the same, then to the highest creditor residing within the state, proving his debt upon oath before the court granting the same, and when two or more persons claiming the administration, are in equal degree, the court shall be at liberty to grant the administration to any one or more, and in the event of the failure of any of the persons aforesaid to apply for the same, or if the person applying shall, in the opinion of the court, be incompetent, then the court may grant administration to any person of competent integrity and ability.

SEC. 15. No letters testamentary shall issue to any executor or executrix, nor of administration to any administrator, until such executor, executrix, or administrator, hath been duly qualified in open court, or, if in vacation of said court, in the office of the clerk thereof by making oath or affirmation, that he, she, or they, will truly and faithfully perform the duties and trusts committed to, and required of him, her, or them, as such executor, executrix, or administrator, and have also given bond with good and sufficient freehold security to be judged of by said court, if in vacation of said court, by the clerk thereof, the penalty of which bond shall be double the supposed amount of the personal estate of the intestate, and conditioned that he, she, or they will truly and faithfully perform the duties, and trusts committed to him, her, or them, as such executors, or administrators according to law, which bond shall be filed in the office of the clerk of said court.

SEC. 16. All bonds given by any executor or administrator by virtue of this act, shall be made payable to the state of Indiana, and any person or persons, body politic or corporate injured by the conduct of such executor, or administrator, may and shall commence and prosecute a suit or suits on said bond, in the name of the said state against the said obligor or obligors in said bond, and their securities, and against the heirs, executors, and administrators of each and every of them, and each and every one of their securities, and shall and may recover all damages which he, she or they may have sustained by reason of the breach of the condition of said bond or any of them.

SEC. 17. If after the granting of any letters of administration upon the estate of a decedent it shall appear that any last will and testament was made by the deceased, and the executor or executors therein named do exhibit the same into court, making request to have it allowed and approved accordingly, the letters of administration so granted as above, shall be revoked and set aside after probate of such testament has been first had, and made in said court; but if the executor, or executors named in said will and testament shall fail, or refuse to act, or shall previous to the issuing of such letters of administration

Letters of administration with the will annexed when granted.

Cl'k may grant letters of administration.

May grant let's in vacation.

Cl'k shall take bond.

Court may confirm or revoke letters.

Cl'k shall not grant let's until after expiration of 15 days.

Right may be contested.

have refused to prove said will and testament, and qualify as such executor, such will and testament shall be annexed to the letters of administration, granted before the discovery thereof, and shall be truly and faithfully executed by the administrator to whom such letters shall have been granted, and all lawful acts done, or to be done *bona fide* by any administrator before probate of any such will, and all purchases made of such administrator *bona fide* before such probate, shall remain good, and shall not be impeached, or altered, by any executor, or executors of such discovered will: *Provided*, that when at any time after such will shall appear, the executor or executors shall have the same remedies against such administrator or administrators, for the goods and chattels, rights, and credits remaining unadministered as he, she, or they might have had before the making of this act.

SEC. 18. When any person shall die intestate in the vacation of said court, and his or her estate is in such condition as to require the immediate care of some person of competent integrity and ability, it shall be lawful for the clerk of such court, in the county in which by the conditions of this act, administration shall be granted to grant some such person, special letters of administration on the estate of the said deceased, until the next ensuing session of said court, or if any person shall have died testate in the vacation of said court, it shall be lawful for such clerk to take proof of the last will and testament of such testator, and to grant letters testamentary to such person or persons as may be appointed by said last will and testament, and such clerk before granting letters of administration or testamentary shall require and take from the person or persons, to whom the same shall be granted bond with good and sufficient security, freehold, conditioned for his or her faithful administration of the said estate, and for his or her faithfully accounting for, and delivering over the said estate to such person or persons as said court may appoint as administrator or executor of the said estate, and such bond shall be filed in the office of the clerk of said court: *Provided*, that such court at its next ensuing session after the granting of such special letters of administration or letters testamentary, at its discretion may confirm or revoke the same, and if such court shall confirm the granting of said letters, it may at its discretion either continue the bond taken as aforesaid by said clerk, or require such administrator to renew said bond, conditioned as aforesaid, and if such court shall revoke such letters it shall proceed to grant general letters of administration to such person or persons as are or may be legally entitled to the same: *Provided also*, that such clerk shall not grant such letters testamentary or of administration, until after the expiration of fifteen days from and after the decease of the testator, or intestate, and if any person or persons interested in the estate of such testator or intestate, shall before the granting of such letters in person, or by attorney, file in the office of said clerk, a notice in writing that the granting thereof will be contested, such clerk shall suspend further proceedings in the premises until the same

shall be heard and determined by said court, at its next ensuing term, unless it shall be made to appear to said clerk that the estate of said testator or intestate is going to unavoidable waste or decay, in which case it shall be the duty of said clerk to issue special letters of administration to some person or persons of competent integrity, and ability, until the next ensuing term of said court, taking bond from such special administrator, conditioned as aforesaid, for his or her faithful administering said estate until next ensuing term.

SEC. 19. When a testator or testatrix shall appoint any person residing out of this state, executor or executrix of his or her last will and testament, and said executor, or executrix shall not make application for letters testamentary within the time prescribed by the provisions of this act for the issuing of letters testamentary or of administration, it shall be the duty of said court, if in term time, and if in vacation, the clerk of said court, to grant letters of administration upon the estate of such testator or testatrix, with the will annexed, which shall remain in force until such executor or executrix shall qualify as such according to the provisions of this act: *Provided nevertheless*, that the said executor or executrix shall qualify as such within the space of one year after the death of said testator or testatrix and not afterwards.

SEC. 20. In all such cases where a man shall marry a woman who is appointed an executrix to the estate of any deceased person, it shall be the duty of such man to give bond with sufficient security for the faithful administration of the estate, as is required by the provisions of this act in cases of administration on the estate of deceased persons, and there shall be the same remedy on such bond given to the party aggrieved by the conduct of such man, so marrying as aforesaid, as upon the bond of an administrator in like cases; and if such man so marrying an executrix, shall fail or refuse to give such bond within thirty days after his marriage to such executrix, the said court shall and may order and decree that the power and authority of such executor in right of his wife, and of such executrix be null and void, and thenceforth all the power and authority of such executor and his wife shall cease, and the said court shall then grant letters of administration with the will annexed, or otherwise, as the case may require, to some person or persons according to the provisions of this act, in the same manner as if no letters testamentary had issued, and it shall be the duty of said executor and executrix to transfer and assign over to said administrator all the property and assets of said estate in their hands, as such executor and executrix, and fully to account for the same, and if such executor and executrix shall fail or refuse so to do, the said administrator shall have power, and it shall be his duty to commence suit against such executor and executrix for the same.

SEC. 21. That from the granting of letters testamentary, or of administration, the executor or administrator thereby appointed, shall be invested with all the powers and rights of the

Estate going to waste, cl'k may issue let's, &c.

When executor shall fail to apply for letters.

Executor shall qualify within 1 year.

When executrix marries husband shall give bond.

Rights shall cease on failure to give bond.

Gen. powers vested in executors & admin'srs

May sue for detention of property.

May maintain acc't, trespass, and cases, &c.

Shall give notice as to solvency or insolvency of estate.

Inventories, how and when made.

Notice of sale, how given.

decedent he may represent, so far as it respects the personal estate of such decedent, wheresoever the same may be found in this state, subject to limitations prescribed by law, on account of the trust committed to them, and the duties arising therefrom, and shall have the right, by proper action, to recover the same, and damages for the waste, injury, or detention thereof; and such right shall, in all cases, have relation retrospectively, to the period of the death of the decedent, so as to include all trespasses or injuries against the personal estate of such decedent, committed after his decease; and such executor or administrator shall also have the right to institute and maintain actions of account, trespass, and on the case for goods and chattels of the testator or intestate injured, carried away, or detained in the life time of such testator or intestate.

SEC. 22. That any and every executor or administrator shall within thirty days after their appointment to such trust, give notice thereof, by publication in a newspaper printed and published within the proper county, if any there be, and if there be no such newspaper printed and published within such county, then the said probate court shall order and direct specially in what manner the same shall be published, whether by written advertisements posted up in the most public places in said county, or by publication in some newspaper printed and published in any other county in this state; and in such publication declare whether the estate entrusted to him be probably solvent, or insolvent.

SEC. 23. And said executor or administrator shall also within thirty days make a full and perfect inventory of the personal estate, goods, chattels, rights, credits, moneys and effects of his testator, or intestate, so far as the same may have come to his knowledge, and shall thereafter, from time to time make further inventories thereof as further knowledge of the personal estate of such testator or intestate may be obtained, which inventories shall be taken and made with the assistance of two respectable freeholders of the neighborhood, who shall appraise the same according to its true value, and such inventory including, as well the rights, credits, moneys, and effects of the testator or intestate not proper to be appraised, as the goods, and chattels proper to be appraised, shall be forthwith filed by the executor, or administrator in the office of the clerk of the said court of the proper county.

SEC. 24. That such executor or administrator shall forthwith after the making and filing any inventory as aforesaid, sell, at public auction, on a credit of at least three months, when the amount purchased exceeds three dollars, the goods and chattels belonging to the estate of the testator or intestate aforesaid, giving at least three weeks notice of the time and place of such sale, by publication thereof, in a newspaper printed in the proper county, if such there be, and by posting written or printed notices thereof, at three of the most public places in the township in which such sale is to be made; and as often thereafter as other inventories may be made, like sales shall be made thereof, upon like notice; and such execu-

tor or administrator, shall at all such sales, require purchasers to execute for the amount of their purchases respectively, bonds or notes, with sufficient security for the payment thereof according to the conditions of such sales: and an account of such sales, shall be kept by some suitable clerk, not interested in the estate of such testator or intestate aforesaid, which account, sworn to by such clerk, shall be filed in the office of the clerk of the said court, by such executor or administrator, to be preserved as a record, and for the value of such sales, such executor or administrator shall be compelled to account: *Provided*, that if the persons executing any notes or bond at said sales, for the amounts of the purchases of individuals, should subsequent to such sale, and before the note or bond so executed may become due or be collected, become insolvent, the said court may, if it be proved by legal and satisfactory evidence, that such executor or administrator proceeded with due caution and care, in taking such note or bond, and in accepting of the security thereto, and that due diligence has been used to collect the sum due, on such note or bond, allow to such executor or administrator, a credit for the amount thereof.

SEC. 25. Every executor and administrator shall proceed with diligence to pay the debts and demands against the estate of their testator or intestate, and shall pay the same in the following order or classes: first, the expense of administration: second, the funeral expenses of the deceased: third, taxes assessed upon the estate of the deceased previous to his death: fourth, the expenses of the last sickness of the deceased: fifth, judgments, decrees, and debts of record against the deceased, according to the priority thereof respectively: sixth, judgments and debts in courts which are not of record: and seventh, debts evidenced by obligation or other instrument of writing, accounts liquidated or unliquidated, and all other claims and demands not herein enumerated.

SEC. 26. No executor or administrator shall give preference in the payment of any debt, over other debts of the same class except those specified in the fifth class, nor shall the commencement of a suit for the recovery of any debt, or the obtaining a judgment thereon against the executor or administrator entitle such debt to any preference over others of the same class; nor shall a debt due and payable be entitled to preference over debts not due, but any executor or administrator may pay debts not due according to the class to which they may belong, after deducting the legal interest upon the sum paid for the unexpired time.

SEC. 27. In any suit against an executor or administrator the defendant may plead that there are debts of a prior class unsatisfied, or that there are unpaid debts of the same class with that on which suit is brought, shewing in such plea the amount of assets in his hand as shall remain, and judgment shall be rendered only for such part of the assets as shall remain after satisfying the debts of the prior class, and as shall be a just proportion to the other debts of the same class with that on which the suit is brought: *Provided*, that the plaintiff

Am't of sales, how kept and filed.

Exec. or adm'r. bound for value of sales. *Proviso.*

Shall pay the debts of estate.

Order of paym't of debts.

Adm'r shall not give preference to claims except as enumerated.

Adm'r in case of suit may plead debts of a prior claim.

may take judgment for the whole or part of his debt, to be levied of future assets.

No action shall be bro't against executor until after the expiration of one year.

Creditor failing, to be postponed.

Duty of adm'r. de bonis non.

Inventories of insolvent estates.

SEC. 28. That no action shall be brought against any executor or administrator as such until after the lapse of one year from the date of his appointment; and in the meantime all persons claiming to have demands against the testator or intestate represented by such executor or administrator, shall file in the office of the clerk of the probate court in which such executor or administrator may have qualified himself to act as such, a statement of their respective claims, describing succinctly the nature and amount thereof, and [any] creditor failing to file such notice within the time aforesaid, shall be barred of any claim to a preference of his demand, on account of the superior dignity thereof, nor shall such executor or administrator, be made answerable to pay such demand out of his own estate, on account of his having paid a debt of dignity inferior to such demand, [before such executor or administrator may have had notice of such demand;] but such demand shall not be defeated nor postponed, if there be assets in the hands of such executor or administrator, out of which the same can and ought to be paid, at a time subsequent to the expiration of the said term of a year; and if a statement of such claim as aforesaid, be filed in the office of the said clerk, and written notice of the existence of such claim and of the failing [filing] of a statement thereof as aforesaid, in the said office, be also given to such executor or administrator: *Provided however*, that whenever an executor or administrator shall die or be removed, and any person or persons shall take out administration *de bonis non*, of said deceased or removed executor or administrator, it may be lawful to sue said executor or administrator *de bonis non* at any time after the expiration of a year from the time the first deceased or removed executor or administrator qualified: *Provided further*, that no suit shall be commenced against any administrator *de bonis non* within three months from the time he or they may qualify as such.

SEC. 29. That so soon as any executor or administrator may discover that the personal estate of the decedent whom he may represent is insufficient to pay the debts and demands, outstanding against the same, or to discharge any money, legacies bequeathed by the will, the execution of which may have been entrusted to him, or to complete payments upon any lands purchased by the decedent, and remaining unpaid for, in part, or entirely, he shall proceed to take an inventory of the real estate of such decedent, whether held by legal or equitable title, or so much thereof as may be necessary to discharge any such outstanding debts and demands, and the legacies and payments aforesaid, in the manner herein above prescribed for the taking of an inventory of personal estate, causing the same to be appraised in the manner herein above prescribed for the appraisal of personal estate and file such inventory and appraisal in the office of the clerk of the said court granting such letters testamentary, or of administration; and thereupon, on the suggestion of such executor or administrator, or credi-

tor or legatee of the said estate, that the said personal estate is insufficient as aforesaid, the heirs and devisees interested in the real estate so as aforesaid inventoried and appraised, shall be summoned, if residents of this state, or if non-residents thereof shall be notified by three successive publications in a newspaper printed and published in the county of which the aforesaid suggestions may have been made, if any there be, or otherwise in the newspaper printed and published in this state nearest thereto, to appear in the said court on a day to be named in such summons or publication, and shew cause, if any they can, why such real estate shall not be sold and made assets for the discharge of the debts, demands, legacies, or payments aforesaid: and if after thirty days notice, by the service of said summons, or sixty days notice by the making of the publication aforesaid, the said heirs and devisees fail to appear, or appearing, fail to shew cause as aforesaid, the court shall order and decree a sale of the said real estate, or of so much thereof as may be necessary for the discharge of the debts, demands, legacies and payments aforesaid, and from time to time, such and so much of the said real estate as may be necessary for the purposes aforesaid, shall be made assets in the hands of the said executor or administrator under the provisions of this act, the administrator or executor aforesaid previous to the rendition of any decree, or order for any such sale, filing in the office of the clerk of the said court, such further and additional bond with security as the court may require; and after such sales shall have been made and confirmed by the court, and not before, a conveyance, transfer, or assignment shall be executed to the purchaser or purchasers thereof, in such manner as the court shall order and direct; and when such sale shall have been made and confirmed as aforesaid, all liens upon or against the real estate, so sold as aforesaid, made or suffered by the decedent in his life time, and not specially excepted and provided for by the order or decree directing such sale, shall be held to be extinguished by such sale: *Provided*, that the holder of such lien be made a party to the proceeding instituted as aforesaid, for procuring the order or decree as aforesaid for such sale, by being summoned, if a resident of the state, in the manner above in this section provided for the summoning of the heirs and devisees aforesaid, and if a non-resident of the state, by being notified of the pendency of the application aforesaid, for the sale as aforesaid of such real estate, by a publication in a newspaper printed and published in the county in which such application and proceeding shall be pending, if such there be, or otherwise in a newspaper printed and published in this state nearest thereto, notifying him by name, and as a party to such proceeding, of the pendency of such application, and of the term of the court, and time at which and when the same will be heard in the said court; which publication shall be made at least three weeks successively, and thirty days or more before the time of the final hearing and determination of such application.

Notice of insolvency.

Real estate to be sold.

Adm'r to give additional bond.

Deed to purchaser.

Proviso.

School comm'r certificate may be assigned.

SEC. 30. That whenever it may become expedient for an executor or administrator to sell real estate belonging to the decedent, or to apply to a court for such sale under the provisions of the aforesaid section, any certificate for school lands executed by a school commissioner, and belonging to the estate of such decedent may be sold (as aforesaid) as the real property belonging to such estate may be sold, and such certificate may thereupon be assigned and transferred by such executor, administrator (as the case may be) to the purchaser, his heirs, or assigns, whether the purchase money of such certificate be paid in whole, or in part only.

Legal obligations may be sold and assigned by ex'r or adm'r.

SEC. 31. That written contracts executed in the lifetime of a decedent, and payable to him, obligating the person or persons executing the same to the performance of any duty, contract, or matter whatever, other than the payment of money, may, it shall be for the benefit of the estate and of the creditors, heirs or devisees thereof, be appraised and sold in the same manner above prescribed for the appraisal and sale of goods and chattels, and when sold may be assigned over to the purchaser or purchasers thereof, by the executor or administrator of the estate to which they may have belonged, at the risk of such purchaser or purchasers, and without any recourse against such executor or administrator, either in his individual or fiduciary capacity, or against the estate of such decedent, or the heirs or devisees thereof.

Adm'r may sell real estate at private sale.

SEC. 32. Whenever any executor or administrator shall be of opinion that the interest of the estate would be promoted by selling any portion of the same at private, it shall be lawful for such executor or administrator, thereupon to make application to the probate court by written petition for permission to sell such property at private sale, setting out in his petition the advantages which will accrue to said estate from such sale, and upon such petition being filed in the probate court, such court shall in its discretion authorize a sale of such property at private sale, if in the opinion of such court, the interest of such would be thereby promoted: *Provided*, that such sale shall not be made at less than the appraised value thereof.

Desperate debts, &c. may be compounded by ex'r or adm'r.

SEC. 33. That upon suggestion made by an executor or administrator, that any claim, debt, or demand whatever, belonging to the estate in his hands to be administered, and accruing in the lifetime of the decedent, represented by such executor or administrator, is desperate on account of the insolvency or doubtful solvency of the person or persons owing the same, or on account of some legal or equitable defence which such person or persons may allege against the same, or for the cause of the smallness of such claim, debt, or demand, and the difficulty of finding the debtors, owing to the remoteness of their residence, or to such executor's or administrator's ignorance of the same, the said court may order such claim, debt, or demand, to be compounded, or to be filed in the said court for the benefit of such of the heirs, devisees, or creditors of such decedent, as will sue for or recover the same, giving the creditors the preference, if they or any of them apply for the same,

at any time before the final settlement of such estate. And if such claim be compounded, such executor or administrator, shall be chargeable with the avails of such compounding; and if the same be taken by any of the said creditors, heirs, or devisees aforesaid, he, she, or they, may maintain an action for the recovery thereof, in the name of such executor or administrator, for his, her, or their own use, and upon recovering the same or any part thereof, he, she, or they, shall be chargeable therewith, after deducting his claim or distributive share, with reasonable compensation for collecting the same, and upon such suits the executor or administrator shall not be liable for costs.

In compounding creditors shall have preference Ex'r or adm'r chargeable with avails. Assignee may sue thereon. Effect of recovery of such demand.

SEC. 34. That whenever any executor or administrator, [shall discover] that the real and personal property of any decedent which is or may be made assets in his hands, to be administered according to law, will not pay and satisfy the debts and demands outstanding against the estate entrusted to his administration, he shall forthwith proceed to make such real estate assets, for the payment of the said debts and demands, by instituting and prosecuting proceedings for that purpose, under and according to the provisions of this act, if the same shall not have been previously done, or by prosecuting such proceedings to final effect, if the same be pending; and shall also forthwith after such discovery, file in the court by authority whereof he may have been appointed, in term time, or in the office of the clerk thereof in vacation, his complaint stating clearly and succinctly the condition of such estate, both real and personal, and the appraised value thereof, the amount of debts and demands outstanding against such estate, so far as the same may have come to his knowledge, and that such estate, real and personal is insufficient to pay the same, and praying generally for relief; and thereupon the said court in term time, or the judge thereof in vacation, shall cause an order to be entered upon the records of said court, directing the creditors of such estate to be notified of the failing [filing] and pendency of such complaint, by a publication for six weeks successively, in a newspaper printed and published in the county in which such complaint may be filed, if any there be, and otherwise in the newspaper printed and published in this state nearest thereto; and further, that unless such creditors notify such executor or administrator, of the existence and extent of their respective claims, by filing the same, or a statement of the nature, description and date of the contract or assumption upon which the same may be founded, in the office of the clerk of said court, previous to the final distribution of the assets of the estate of said decedent, such claims aforesaid will be postponed in favor of the claims of the more diligent creditors; which publication such administrator or executor, shall cause to be made forthwith, according to the said order of the court or judge aforesaid. And from the date of the filing of the said complaint, no suit or action shall be brought or sustained, against such executor or administrator, unless waste or negligence or fraud in the discharge of the duties of his trust,

Insolvent estate how settled.

Real estate to be made assets.

Complaint to be filed.

C. or judge shall order creditors to be notified &c

Publication to be made.

No suit to be bro't vs. adm'r &c. unless for fraud &c. after complaint filed.

If complainant fails to establish fraud, &c. he shall pay costs.

Execution vs. adm'r &c. to be recalled.

Final decree, how made and claims how adj. justed.

Trial by jury.

Order of distribution of insolvent estates.

Liens to be first paid.

as such, be alleged against such executor or administrator; and if any such suit or action be brought after the filing of such complaint, the plaintiff, complainant or claimant alleging such fraud, negligence, or waste, and such plaintiff, complainant or claimant shall fail, upon the trial thereof, to establish such fraud, negligence, or waste, against such executor or administrator, such plaintiff, complainant, or claimant, shall pay the costs of such suit or action, although he may recover a verdict, decree or judgment, against such executor or administrator, for which costs such executor or administrator shall have judgment. And any execution which may have issued out of the said probate court, against such executor or administrator, to be levied only of the estate of the decedent, in the hands of such executor or administrator, shall be recalled by a superseas to be issued by the clerk of the said court, and no further execution shall be done, on any decree or judgment outstanding in the said court against such executor or administrator, to be levied of the estate of the said decedent in his hands. And at the term of the said court, holden next after the making of the publication above in this section provided for, and at any or as many succeeding terms as may be judged necessary by the court, such administrator or executor, having proved in said court, the making of the publication above directed, all such claims and demands against the estate, in the hands of such executor or administrator, as may have been filed in the office of the clerk of the said court, shall be finally heard, acted upon and determined by the said court, according to legal, oral, or written evidence, or depositions taken on reasonable notice of the time and place of taking thereof, such executor or administrator having a right to examine the claimant under oath, touching the justice of his demand; and upon such final hearing of the said demands, the court shall allow or disallow the same, in whole or in part, as to him may seem just and right, either party having a right to demand a trial by jury, if the sum in controversy shall exceed twenty dollars, and such decision shall be final except upon appeal or writ of error. And after the estate in the hands of such executor or administrator, to be administered, shall have been converted into money, such executor or administrator, shall pay the same into court, and the same shall constitute a fund for the payment of demands against the said estate, in the following order and manner, to wit: first, the expenses of administration: second, the funeral expenses of the decedent: third, the expenses of the last sickness of the decedent, all of which shall be first fully paid: and fourth, all other debts and demands against such estate, without regard to their dignity, each creditor being entitled to his equal share of the same, in proportion to the extent of his demand, as the same may have been allowed in the said court, under the provisions of this section; and all other demands not being filed, as above directed for allowance, being finally and forever postponed and defeated: *Provided*, that nothing in this section contained, shall be construed to defeat any lien created or suffered in good faith by such decedent

in his lifetime, against any portion of his estate, and remaining unsatisfied and unextinguished; but such lien shall first be satisfied out of the estate bound thereby, if the same be sufficient, and the residue of the proceeds thereof shall constitute a part of the fund above directed to be paid into court, for distribution among the creditors aforesaid; and if the estate bound by such lien, be insufficient to satisfy the same, the creditor in whose favor such lien may have been created or suffered, shall, as to the residue of his claim, be left unsatisfied, after having exhausted the estate bound thereby, stand on an equal footing with the general mass of the creditors of the said estate; and by filing the residue of such demand, in the office of the clerk of the said court, and procuring the same or part thereof to be allowed under the provisions of this section, shall be entitled to his equal share, in proportion to the said unsatisfied residue of the said claim, of such portion as may remain of the fund above directed to be paid into court for distribution, after other demands of superior dignity, according to the provisions of this section, shall have been paid and discharged.

Sec. 35. That after the lapse of one year from the taking out of the letters testamentary or of administration, and after the payment of all creditors, and of the charges and expenses of administration, the executor or administrator of a solvent estate, shall make distribution of the residue of the assets, moneys and effects remaining in his hands, according to the last will and testament, the execution of which may have been committed to his charge, or if there be no such will, according to the law of this state regulating descents and distribution; and such executor or administrator, may cause the widow and known heirs or legatees of the decedent he represents, to be summoned to answer in the said court, of and concerning such distribution, by filing a petition in such court, setting forth any matters necessary for his justification, to be answered to by such widow, heirs, or legatees, or to be determined by said court, and such petition shall be answered by such widow, heirs, or legatees on oath; and proof on the hearing thereof may be adduced, as to the rights and identity of such widow, heirs, or legatees, which proof shall consist of oral or written legal evidence, or of depositions taken upon reasonable notice of the time and place of taking the same; or the widow, heirs, and legatees of such decedent or any of them, may file in the said court, their joint or several petitions, claiming their respective shares, and such executor or administrator, shall answer thereto, and the matter shall be tried and determined, after twenty days notice to such administrator or executor, by summons or citation, or on his appearance, on proof as is above stated, [as to identity, and the rights of said parties.] [And in making decree as to the distribution of the said estate among such heirs, the court shall require those who may have received in the lifetime of the said decedent, advances of settlements, or portions or parts thereof, to answer as to such advances, and the same shall be charged against such heir, in making the distribution herein provided for.] And on making

Distribution of a solvent estate how made.

Widow, &c. may be summoned in distribution.

Widow, &c. shall answer. Proof.

Widow, heirs, &c. may file petition for shares. Adm'r &c. shall answer. Trial.

Heirs &c. to answer as to advances.

such distribution, the court may require of the distributees respectively, previous to their respective shares in such distribution being paid to them, to file in the office of the clerk of said court, bond with security, payable to the state of Indiana, conditioned for the refunding of their ratable proportions of the estate distributed to any then unknown heir, legatee, or creditor who may afterwards appear; and such bond shall be approved of by the court, and remain on file for the benefit of any such unknown creditor, legatee, or heir, who at the time of such distribution, and for five years previous, may have been a non-resident of this state, or who at the said time may have been a minor or an insane person. And the decree of the court, in regard to such distribution, obtained or suffered by such executor or administrator in manner aforesaid and in good faith, without fraud, collusion or negligence on his part, shall be conclusive evidence in his favor, and a full justification for any payment made in accordance therewith.

SEC. 36. That whenever a final settlement of the estate of any decedent shall be made, in the absence of any interested person, such person not having had reasonable actual notice thereof, such absentees shall be permitted to open such settlement, upon bill filed, in the court in which the same may have been made, setting forth clearly and particularly, the items and things complained of, at any time within five years after the making of such settlement, and not afterwards, unless such person be an infant, *non compos mentis*, or without the United States on public business, then in any such case, such person shall be permitted to open said settlement as aforesaid, in one year after such disability may be removed, and not afterwards.

SEC. 37. That in all proceedings instituted under any of the provisions of this act for the benefit of infants, or in which they may be plaintiffs, complainants, or petitioners, such infants shall appear by their guardian at law, or by their guardian *ad litem* appointed by the court to prosecute the matter, and such proceedings, if conducted in good faith, without fraud, shall not be liable to be opened by such infants, on their arriving at mature age; and in all proceedings instituted as aforesaid against such infants, they may appear and answer, either by their said guardian at law, or by guardian *ad litem* appointed as aforesaid, and such infants may open such proceedings, and any decree, order, or judgment thereon, any time within one year after they shall arrive at mature age, by filing a petition in the court in which such proceeding may have been had, for a review thereof, and on the final hearing thereof may have decree or judgment thereon, according to right and justice.

SEC. 38. That the executors or administrators of the estates of persons dying without any known heirs, and without having disposed of their estate by will, in whole or in part, shall make all the real and personal estate of such decedents not disposed of by will, assets in their hands, by making sale thereof under the order of the probate court, made upon peti-

Distributees to give bond to refund &c.

Decree final, if without fraud.

Absentee interested, may open settlement, by bill &c. within five years.

Infant &c. may open within one year.

Infant may prosecute in P. C. by guardian.

Proceedings by guardian final, in favor of infant.

Proceedings against infants may be opened, &c.

Review in favor of insolvent.

Estates without heirs, how disposed of.

tion of such executor or administrator filed therein, according to the mode of disposing of the estates of persons dying insolvent, above herein provided, and the residue of the estate left, after paying expenses of administration, funeral expenses, charges of the last sickness, and all other demands against such estate, shall be paid into the treasury of state, there to be credited on the books of that office to the unknown heirs of such decedent; and in like manner, a legacy or any other estate of a decedent, belonging or bequeathed to a person known to be a resident without the United States, shall be paid into said treasury, there to be credited in like manner to such heir or legatee: And any such unknown heir or non-resident heir or legatee, may at any time thereafter, file his petition in the court in which such estate may have been settled, claiming the said estate paid into the treasury, and on proving himself entitled thereto, the court shall decree the same to be paid to him accordingly; and the treasurer of state, upon the production and filing in his office of a copy of such decree, shall pay the same to the person so as aforesaid entitling himself thereto. And unless the estates aforesaid be paid into the state treasury, as is above prescribed, within ninety days after the expiration of the time allowed by the provisions of this act for the settlement of solvent estates, it shall be the duty of the auditor of public accounts to institute against the defaulting executor or administrator and his securities, suit for the recovery thereof, upon their bond. And to the end that such auditor may have the necessary information to enable him to comply with the above requisition, it is hereby made the duty of the clerks of the several probate courts, to transmit to such auditor such knowledge as they may have touching the situation of estates of decedents dying without a will, and without known resident heirs, or having devised any legacy or estate to a person known to be a resident of parts without the United States, which information shall be transmitted as aforesaid, within thirty days after the expiration of the time allowed as aforesaid for the settlement of such estates.

SEC. 39. That if any person shall unlawfully and without authority, intermeddle with, or embezzle any of the goods, chattels, rights, credits, moneys or effects of a decedent, such person shall be chargeable as an executor of his own wrong, and shall be liable to the action as at common law, of the creditors of such decedent or other person injured by such intermeddling and embezzlement, to the extent of the damages sustained thereby, or such creditor or other person injured as aforesaid, may sue such wrong doer as in chancery, and compel him to make answer under oath concerning the premises, and on the final hearing have decree according to justice and equity.

SEC. 40. That any mal-administration, by an executor or administrator, of the assets in his hands to be administered, whereby the same may be lost or rendered less valuable, or diverted to the injury of any creditor or other person entitled in course of due administration to distribution, or any negligence in the discharge of the duties of their trust, shall be denomi-

After payment of debts &c. to be p'd into state treasury.

Also legacies &c. of legatee out of the U. States.

Discovered heir &c. may reclaim his estate.

How to proceed.

Treas. of state to refund.

Suits vs. administrator &c. for not paying into the state treasury.

Estates without heirs to be certified by clerk to auditor.

Executor de son tort, how sued.

His liability.

Creditor may sue wrong doer, as in chancery.

Waste, how committed by adm'r &c.

Suit for waste
vs. adm'r. &c.

nated waste, and may be alleged as such in any suit or action, against such executor or administrator, or against him and his securities; and such executor or administrator being convicted of such waste, and his securities, shall be liable to answer out of his and their own estates, to any person or persons injured thereby.

On return of ex-
ecut'n vs. adm'r
&c, scire facias
may issue.

SEC. 41. That if an execution against the goods and chattels of a decedent, in the hands of an executor or administrator, be returned by the proper officer with his return endorsed thereon, that there are no such goods and chattels in the hands of such executor or administrator to be found, the plaintiff in such execution may have a writ of *scire facias* against such executor or administrator for the recovery of his judgment upon which such execution may have been issued, and in such writ of *scire facias* may allege such return, and also that such executor or administrator has wasted the assets in his hands to be administered, by virtue of his appointment as such; and upon the hearing, the court shall render judgment according to equity and law; and if the waste alleged be proved and established, judgment shall be rendered payable out of his own estate: Or upon such return made as aforesaid, the said plaintiff in such execution, may institute an action upon the bond of such executor or administrator and his securities, and in such action may allege such return and waste as aforesaid, and have judgment against such executor or administrator and his securities, payable out of his and their own estate, if such waste so alleged as aforesaid be established: But in each of the said proceedings no mispleading or lack of pleading, of such executor or administrator and his securities, or any of them, shall render him or them liable beyond the amount of the assets for which such executor or administrator ought to account; nor shall any judgment by default, *nil dicit*, *non sum informatus* or confession, preclude such executor or administrator, or his securities, from shewing that the assets committed to such executor or administrator, for administration, have been fully administered according to law.

Mispleading, &c
not to prejudice
adm'r &c.

Nor judgment by
default, &c.

When to issue
scire facias on
judgment quan-
do, &c.

SEC. 42. That any person having obtained a judgment, against any executor or administrator, to be levied of the assets of a decedent when the same may come to the hands of such executor or administrator to be administered, may have a *scire facias* against such executor or administrator alleging that such executor or administrator has, since the commencement of the suit eventuating in the rendition of such judgment, acquired or become possessed of such assets, and such proceedings and judgment may be had thereon, as are consistent with law and the rights of the parties: Or such person may sue out a *scire facias* against such executor or administrator, upon such judgment, alleging that such executor or administrator has wasted the assets of the estate entrusted to his administration, either before or after the obtaining of such judgment; and such proceedings and judgment may be had thereon as are prescribed for proceedings and judgment, upon writs of *scire facias*, against executors or administrators in other cases in which waste may be alleged.

SEC. 43. That whenever any executor or administrator shall be guilty of fraud, negligence, or other mal-administration of, or in regard to the estate entrusted to his administration, or shall fail to make a settlement of such estate, within or at the proper time, so that thereby the assets of right belonging to such estate may be in danger of being lost or diminished in value, or may be diverted or withheld from the purposes contemplated by law, or if real or personal estate, or choses in action, may have been, in the life time of a decedent, by him fraudulently conveyed, transferred, or devised with intent to defeat creditors; such creditors or other persons aggrieved, or any one of them who will, may at any stage of the proceedings relative to the settlement of the said estate, institute an action on the bond of such executor or administrator and his securities, or may file a bill in equity, in the probate or circuit court at his election, for the benefit of all other creditors or other injured parties who will exhibit their demands or complaints, and contribute to the expenses of such suit in chancery, making such executor or administrator, the fraudulent grantees, transferees, or devisees to whom such estate may have been fraudulently conveyed or transferred as aforesaid, such of the debtors of such estate as the complainant or complainants may choose or know as such, and all other proper persons, parties thereto; and the court upon hearing the same, shall decree such relief as may be consistent with justice and equity.

Creditor may
sue on adm'r's
bond for fraud,
&c.

Or file bill in e-
quity in probate
or circuit court.
Creditors may
join.

SEC. 44. That letters testamentary of administration of guardianship, granted in any of the states or territories of the United States, or in any foreign country, shall authorize the executor or administrator thereby appointed, to sustain actions and suits, and to do all acts coming within their powers as such, within this state, upon the same, or copies thereof duly and legally authenticated, being produced and filed with the clerk of the court in which such suits or actions are to be maintained, or within the jurisdiction whereof such acts are to be done. And such guardians, after having filed a copy of their appointment, and given bond and security under the provisions of this act, shall have all the privileges of resident guardians.

Decree.
Suits may be
sustained on for-
eign letters &c.
authenticated.

SEC. 45. That the probate court of any county in this state, which now has acquired, or shall hereafter acquire jurisdiction over the estate of any decedent, or the settlement thereof, by letters of administration or testamentary, having been issued by such court or the clerk thereof, or which has, or shall acquire such jurisdiction, in and over any real or personal estate of such decedent, situate or being within any other county within this state, whether such estate be held by a legal or equitable title, inchoate or complete, and whether a part or the whole of the purchase money thereof be paid, in the same manner and to the same extent as though such estate were situate or lying in such county, as to the ordering, adjudging, decreeing, doing or directing such sale or other disposition of the same, or of the rents and profits thereof, or otherwise.

Jurisdiction of
estates lying out
of the county.

SEC. 46. Every executor or administrator whose duty it shall be to give any of the notices required by the provisions

Copy of notice
to be filed in
clerk's office.

of this act shall file a copy of said notice in the office of the clerk of said court, with an affidavit made thereon before some justice of the peace in the county in which such notices are herein directed to be given, by some competent witness, stating therein the time and times, and place and places, when, and where said notices were published or put up, and said copy or copies, attested as aforesaid shall be considered as a record of said court, and the same with the certificate of the clerk thereon, certifying that said copy or copies were filed by such executor or administrator, shall be received as evidence in any court of law or equity in this state: *Provided*, that nothing herein contained shall be so construed as to preclude any executor or administrator from proving his compliance with any of the provisions of this act in any other manner which may be deemed competent testimony under the general laws of the land by the court before whom such evidence may be offered.

SEC. 47. In all cases where executors or administrators may have taken, or shall hereafter take notes or other obligations of persons, for the payment of purchases made at sales of the personal estate of any decedent, and the persons executing such notes, or obligations, become insolvent before the same falls due or is collected, it shall be lawful for the probate court, if it be proved to the satisfaction of the court by legal evidence, that the executor or administrator had used due caution, and had done his duty in taking such security, and also used due diligence to cause the money so due to be collected, to allow such executor, or administrator, a credit for the amount thereof.

SEC. 48. That it shall be and is hereby declared to be the positive duty of probate courts, *ex officio*, to compel, by citation and attachment, all executors and administrators to appear at proper times, and file inventories of estates entrusted to their administration, and on the final settlement of any such estate to make and file an account current, exhibiting a perfect *expose* of all receipts and disbursements, and of the exact amount of the balance in their hands, after deducting the amount allowed by such courts to the said executors or administrators, for their charges and expenses as such; and such final settlement to make without any unnecessary delay.

SEC. 49. That the appointment by last will and testament, or by any codicil thereto of a debtor of a testator to act as executor, of such last will and testament or codicil shall not hereafter operate to extinguish the debt or demand due from such executor to his testator at the time of the death of such testator, unless so directed by such will or codicil, but such executor shall be liable to account for such debt or demand whenever the same may be due and payable as assets in his hands to be administered; and a failure to so account for the same shall be considered waste of estate entrusted to his administration, and as a fraud upon the heirs, devisees, and creditors interested, and may be alleged as such in any action, suit or plaint against such executor, but not against his securities as such executor for the faithful discharge of his duties as such executor.

Affid'vt to be filed with notice.

Clk's certificate sufficient evidence.

Adm'r to be credited with insolvent notes.

Court shall ex officio compel settlement.

Debtor appointed executor shall pay his debts.

Failure to pay suits may be brought.

SEC. 50. That if there be no heir or devisee of a testator or intestate, present to take possession of the real estate left by such testator or intestate, the executor or administrator entrusted with the administration of the personal estate of such testator or intestate, may, as trustee for the proper heirs or devisees, take possession of such real estate, and take the rents and profits, accounting therefor as for other assets in his hands to be administered; either in the payment of demands against the estate of such testator or intestate, [or by paying of demands against the estate of such testator or intestate,] or by paying the same to the proper heir or devisee demanding the same, or by depositing the same in the treasury of state, as the law of the case may require.

SEC. 51. That the said court may, upon application made, or advice or information had, appoint guardians of minors, idiots and lunatics, for the protection of their persons or estates, or both. Such guardian of the person may be appointed in the county in which the minor, idiot or lunatic may principally reside, and such guardian, for the protection of estates in the county within which the same may be mainly situate. And any such guardian, previous to being appointed as such, shall execute bond payable to the state of Indiana, with freehold security to be approved of by the court, in a penal sum amounting to at least double the value of the estate of such minor, idiot, or lunatic, conditioned for the faithful performance of the trusts of such guardianship, which bond shall be filed in open court. Such guardian shall also be sworn in open court, to the faithful discharge of the trusts devolving upon him as such: *Provided, however*, that nothing in this section shall be so construed as to render invalid any appointment by last will and testament of any guardian for any child or children of any testator over whom at the time of the death of such testator he or she may have the legal control and guardianship as the parent of such child or children, for and during the minority of such child. Such guardian being liable to be removed for good cause shewn, in the same manner as guardians appointed by the court.

SEC. 52. That every guardian shall have full power to dispose of the personal estate of the minor, lunatic or idiot committed to his charge, for the care, education, and sustenance of such infant, or for the care and sustenance of such lunatic or idiot, and for the general advancement and benefit of the estate of such infant, lunatic or idiot; and all sales of such personal estate shall, as to the making of an inventory, the conditions of such sales, and the notice thereof to be given, and as to the filing in the probate court of such inventory, and a bill of such sales, and in all other respects, be made, conducted, and effected, as is required of executors and administrators, in regard to the disposition of personal estate in their hands to be administered, unless special order of the said court shall have been first made, authorizing a different disposition thereof. And every guardian shall be liable to have his authority and appointment, as such revoked by the said court for any abuse of his trust, and to account to his successor, or to the

Adm'r may enter on real estate if heir is absent.

Shall account therefor.

Guardian, when to be appointed.

Guardian's bond

Oath of guardian Guardian's powers as to selling property.

Inventory, sale, &c.

Guardian's authority, how revoked.

Shall account.

Suit vs. guardian.

minor on his coming to full age, or to the lunatic or idiot, on his recovering his reason; which accounting may be enforced against such guardian in his life time, by such proceedings as are in this act provided to enforce the accounting of executors and administrators, or at any time, by action on the bond of such guardian and his securities, and his and their legal representatives, or by suit in chancery to compel the same.

Guard'ns may be summoned to account.

Court shall order guardian how to dispose estate, &c.

Real estate belonging to minors may be sold

Appraisers appointed. Guardian shall give bond.

SEC. 53. Whenever hereafter any minor or minors under the age of twenty-one years, whose estate may be in the custody of a guardian or guardians, shall, by a next friend, file in the probate court of the county from which such letters of guardianship issued, a petition setting forth that such guardian or guardians have not disposed of the property or estate of such minor or minors, in such manner as will conduce to their interest, or that such guardian have made use of the property or estate of such minors for their own benefit, or that it would be to the interest of the said heirs to have the money, in the hands of the said guardian or guardians, vested in lands for the benefit of such minors, it shall be the duty of such probate court to cause such guardian or guardians, at the next term of such court, to come before them and account for the property or estate of such minor in his or their hands; and such court shall, upon such accounting, order the said guardian or guardians to vest the same in land for the benefit of such minors, or make such other order concerning it as shall conduce to the benefit of such minors; and said court may on such investigation, vacate the office or trust of such guardian, and appoint another guardian in his or her room, as right and justice may require.

SEC. 54. That if, upon the application of any guardian of a minor, lunatic or idiot, it shall appear proper and necessary, either for the education or sustenance of such minor, or for the sustenance of such lunatic, or idiot, that the real estate of such minor, lunatic or idiot should be sold, or if it should appear that such real estate is sustaining unavoidable waste, decay, or injury, or that the same is incumbered by a lien, or held by an equitable title only, a part of the purchase money thereof being yet unpaid, or if it should appear that the price of such real estate can be vested in other property, to the manifest advancement of the estate and interest of such minor, lunatic or idiot, the probate court may decree a sale of such real estate, in the following manner, to-wit: Upon the making of the application for sale thereof, the court shall appoint three disinterested freeholders, who, under oath, to be endorsed upon a copy of the order for their appointment, or taken in open court, and entered of record, shall appraise the same, and make out a written report of such appraisement, and return the same into court; whereupon the guardian shall enter into, execute and file in the said court, bond payable to the state of Indiana, with freehold security, to be approved of by the court, in a penalty of double the appraised value of such real estate, conditioned for the faithful performance of moneys arising from such sale, under the direction of the court, and for the rendering of an account therefor according to law: and then the court shall order a

sale of such real estate, providing in the decree therefor, for reasonable notice of such sale, the credits to be given for the purchase money and the mode of securing the same, and appointing one or more commissioners to effect such sale. Such commissioners shall make report of their doings in the premises to the court, and deposit the avails of the sale in open court, and thereupon the court may confirm such sale and order a conveyance to be made therefor, by the guardian or otherwise, according to the usages of courts: *Provided*, that any certificate for school lands, executed by a school commissioner, and belonging to any estate of a decedent may be sold by any guardian as provided in the 29th section of this act: *And provided also*, that such real estate may be sold by said guardian, where the same may be in the opinion of the court to the interest of the estate, at private sale, as provided in the thirty-first section of this act.

Com'r may report, &c.

Court may order real estate to be sold at private sale.

SEC. 55. Every guardian whose duty it shall be to give any notice as required by the provisions of this act, shall file such notice in the office of the clerk of said court as provided in the forty-fifth section of this act, and which shall have the same force and effect as is provided in said section.

Guardian shall file notice in clerk's office.

SEC. 56. That the official bonds of executors, administrators, and guardians, executed in accordance with the provisions of this act, shall be made payable to the state of Indiana; and a violation, or neglect of any duty, required by law, of any executor, administrator or guardian, shall be deemed a breach of the condition of his bond, and sufficient to render him and his securities liable, by action thereon in the circuit court, to account to any party injured by such violation or neglect for all damages sustained thereby. And one or more recoveries on such bonds, shall be no bar to other recoveries, but actions may be maintained, and recoveries had thereon, as often as cause of action may accrue against such executor, administrator or guardian, either by action of debt or covenant, or by scire facias, upon the first judgment had thereon, which suits and actions shall be in the name of the state of Indiana, and if instituted for the use of any person or persons, body politic or corporate, other than the said state, the same shall be in the name of the said state, [on the relation and] for the use of such person or persons, body politic or corporate.

Suit may be bro't on guardian's bond.

SEC. 57. It shall hereafter be the duty of the several probate courts in this state, to examine the bonds of all guardians who may have obtained letters of guardianship from such court, at least once in every two years; and if, upon such examination, such court shall be of opinion, that there are any doubts of the solvency or sufficiency of the security in such bonds, they shall thereupon require such guardian to execute a new bond with security to the satisfaction of such court, and upon the failure of such guardian so to do, such court shall reind and revoke his or her letters of guardianship.

Courts shall examine guardian's bonds in two years.

SEC. 58. That if, at any time, it should appear that letters testamentary, of administration, or of guardianship may have

been granted upon insufficient security, or that such security shall have become, or may be likely to become insufficient to secure the performance and discharge of the trust intended to be secured thereby, or that an executrix or *feme sole* guardian, may have married, or be likely to marry, or that any such administrator, executrix, executor or guardian, may be likely to prove insolvent, or if any such administrator, executor, executrix, or guardian shall refuse or fail to exhibit inventories, or to render a full and just account of the estates entrusted to them, or waste the same, or fail to make the best application thereof, according to law and the order of the court, or if any such administrator, executor, executrix or guardian should because of age, sickness, imbecility of mind, change of residence, actual or intended, or other reason, become less capable to discharge his or her trust, than the well being of the estates or persons entrusted to his or her care may require, or if it should appear that any guardian treats his or her ward cruelly, or with neglect, or if it should appear that any of those trusts have been abused in any way whatever, the probate court in each, and all, or in any of such cases, shall have the power, and is hereby enjoined, upon complaint being made or information acquired in any way, either by sentence to revoke the appointment of such executor, executrix or guardian, or to cause him or her to be cited to appear in court, and upon a full examination of the premises, take such further security from such administrator, executor, executrix or guardian, as may be sufficient to secure the due performance and discharge of the duties and trusts aforesaid, and any sums of money or estate, already in the hands of such executrix, executor, administrator or guardian. And if such letters testamentary, of administration, or of guardianship should be revoked, a successor in the trusts aforesaid shall be appointed according to law, who may maintain against his predecessor and his securities on his bond or otherwise, any action, suit, bill in chancery, or such other proceedings authorized by law, as may be best calculated to secure a recovery of the moneys or estate in the hands of such predecessor, or with which he may be properly chargeable, or for the recovery of damages in lieu thereof. And the said probate court shall have power to compel the payment and delivery of such moneys or estates to such successor, by attachment and *distress infinite*, of the person and goods of such predecessor.

SEC. 59. That if any executor, administrator, or guardian, acting under the authority of this court, shall neglect or refuse to perform any duty enjoined, or abuse any power hereby conferred, or by removal, imbecility of condition or any other cause whatever, shall in the opinion of said court, become unfit for the exercise of such trust, or if securities are in danger of suffering, by an act or omission of his or their principal, said court is hereby authorized and enjoined, upon the complaint of such securities, or any other person interested, to remove such person from said trust, and appoint a successor or successors, first giving ten days notice of such intended removal, by citation,

Court may revoke appointments of administrators or guardians.

May issue citation.

Successors may be appointed.

Adm'r, guard'n, &c. may be removed on application of securities.

Trustee shall account, &c.

if the person sought to be removed reside within the state, except in cases where such notice will endanger the rights of the parties. And such person removed from any of the trusts aforesaid, and his securities, shall be liable to account according to law, for all acts in said trusts, and omissions of duty therein, or abuses thereof, to such successor and all others interested therein. And such successor is hereby invested with full power to call said trustee and his securities to account for their liabilities incurred thereon.

SEC. 60. That if any surety to any bond, executed by any executor, administrator, or guardian, conditioned for the faithful performance and discharge of the duties and trusts of his appointment, shall discover, or believe that such executor, administrator, or guardian is wasting or mismanaging the estate entrusted to his administration or care, whereby such surety may be liable to suffer loss, the probate court may in its own discretion or upon application of such surety, order and compel such executor, administrator, or guardian, to render an account of his administration or guardianship, and if on such accounting, it should appear that the said complaint is well founded, or if such executor, administrator, or guardian should fail or refuse to render such account, his appointment as such shall be revoked, and a successor appointed, whose duty it shall be, forthwith to institute, for the safety of such surety, all, or any proceeding prescribed in this act against his predecessor to compel him to account for the estate in his hands or to recover the same: *Provided however*, that said court in the exercise of the discretion above specified may refuse to remove such executor, administrator, or guardian, when such executor, administrator, or guardian shall tender other security to the satisfaction of said court; and that from the time of giving such other security, the former security shall in nowise be liable for the future acts of such executor, administrator, or guardian.

SEC. 61. That executors, administrators, trustees, and guardians, having money in their hands by virtue of their trusts, may, by order of the probate court, loan the same, upon such security, and for such length of time, as the court may direct; and it shall be their duty to seek occasion so to loan the same, and on failure so to do, shall be held accountable for interest thereon out of their own estates, and in like manner they shall be held accountable if they use such money for their own benefit, or in application to their own business. And if such money be loaned as aforesaid, and the security required by the court be taken, *bona fide* and without fraud, such administrators, executors, trustees, or guardians, shall not be held accountable for any loss thereof, unless they should fail in using due diligence to enforce the collection thereof.

SEC. 62. That if there be two or more executors, administrators, or guardians, acting jointly, the probate court may, from time to time, on the application of any one or more of them, and for good cause shewn, order and compel every such executor, administrator, or guardian, to account with his co-executor, administrator, or guardian, for all assets or estate

Adm'r or guardian shall acc't to court.

Adm'r or guardian may give new security.

Guardian may loan money.

C. compel adm'r or guardian to acc't to his co-adm'r or guardian.

which may have come to the hands of such executor, administrator, or guardian, as such; and whenever the court may judge the same necessary, order may be taken to require such executor, administrator, or guardian to secure the amounts in his hand as such, by bond executed as other trust bonds are to be executed by this act; and on failure of any one so to do, his appointment shall be revoked, and a successor appointed, whose duty it shall be to recover out of the hands of such removed executor, administrator, or guardian, the assets or estate in his hands, by the proceedings authorized by the provisions of this act.

On failure his
app'tment to be
revoked.

Att'y elected
probate judge
shall not dis-
qualify him fr'm
practising in
sup. or c. court.

SEC. 63. That the election of any attorney and counsellor at law, to the office of judge of the said probate court shall not disqualify him from practising in his professional capacity in any court of law or equity, except in such probate courts, and in cases in the supreme and circuit courts, which originated in such probate court.

Power given by
will to exec'r to
sell real estate.

SEC. 64. In all cases where a power or discretion is given in any last will and testament or codicil, to sell real estate, it shall be taken and construed as a power to sell and convey; and an administrator with the will annexed shall have all the power that the executor appointed by the will would have had, if he had executed the will.

Probate judge
interested c. ct.
shall have juris-
diction.

SEC. 65. In all cases where the probate judge of any county shall be interested in the settlement of any estate, or of kin to the deceased, or to those who may have an interest in the settlement of any estate, the circuit court of the proper county shall have the jurisdiction hereby conferred on the probate court of said county, and in all such cases exercise the same powers, with the restrictions and limitations thereof, that the probate court of such county might, or could do under the provisions of this act.

Letters shall not
be granted to
minors.

SEC. 66. Letters testamentary, or administration shall not be granted to any one under the age of twenty-one years, nor shall any one under the age of twenty-one years maintain any action in their representative capacity.

Adm'r may be
appoint'd during
minority of ex'r

SEC. 67. If any one shall be appointed an executor under the age of twenty-one years, an administrator during the minority of such executor shall be appointed until such executor shall arrive at age; and such administrator during the minority of such executor shall be considered as the representative of the testator, and have all the powers, and be subject to all the liabilities by this act granted to and imposed upon general administrators; and such executor on coming of age may have a scire facias and execution on all judgments recovered by the administrator during the minority of such executor, and which shall remain unpaid at the time such executor shall arrive at full age.

Terms of court.

SEC. 68. The probate court of each county shall hold four terms in each year to commence on the second Mondays of February, May, August, and November, and shall at each term sit six days if the business thereof require it: *Provided however*, that if the board doing county business or the circuit

Proviso.

court, shall happen at the time herein prescribed for the sitting of the probate court, the said probate court shall be deferred to, and commence on the Monday next following the term thereof.

SEC. 69. That the letters testamentary by this act authorized to be issued, may be in the following form to wit:

Form of letters
testamentary.

I — clerk of the probate court of the county of — in the state of Indiana, do certify the annexed to be a true copy of the last will and testament of —, late of the said county, deceased, and that —, the executor therein named, hath duly proved the same, according to law, and is duly authorized to take upon himself the administration of the estate of the said testator, according to the said will.

Witness my hand and the seal of the said court, the — day of —, in the year of our Lord one thousand eight hundred and —.

And letters of administration shall be issued in the following form, to wit:

I —, clerk of the probate court, of the county of —, in the state of Indiana, do certify, that administration of the goods, chattels, rights, credits, moneys, and effects, which were of —, late of the said county, deceased, who died intestate, is granted unto —, and the said — is authorized to administer the same according to law.

Witness my hand, and the seal of said court, the — day of —, in the year of our Lord one thousand eight hundred and —.

CHAPTER XXV.

AN ACT organizing the Supreme Court, and defining its powers and duties.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the supreme court shall consist of three judges, who shall be commissioned by the governor, any two of whom shall be competent to hold a court; which court shall be a court of record, to all intents and purposes.

Sup. ct. to con-
sist of 3 judges.

C. of record.

SEC. 2. Every judge so commissioned, before he enters on the duties of his office, shall take an oath or affirmation, which may be administered by any person legally authorized to administer oaths, in the form following, to wit: "You do solemnly swear, (or affirm as the case may be,) that you will support the constitution of the United States, and the constitution of the state of Indiana, and that you will, to the best of your ability and judgment, faithfully discharge the duties of your office, as a judge of the supreme court of the state of Indiana." And each person so commissioned and sworn, shall have a certificate of having taken said oath, endorsed on the back of his commis-

Oath of Judges.

Certificate of
endorsed on
commission.

sion, by the person administering the same, and a similar certificate filed in the office of the clerk of the said supreme court, and also in the office of the said secretary of state.

Court when and where holden.

SEC. 3. The said court shall be holden in the state house in the town of Indianapolis, on the third Monday in May and the third Monday in November in each and every year: the term commencing on the third Monday in May, shall be called the May term; and the term commencing on the third Monday in November, shall be called the November term. Each term shall continue thirty days, unless the business before the court shall be sooner disposed of, and may be continued beyond that time, should the judges deem it expedient and necessary. The judges shall have the power of adjourning said court to any other room in the town of Indianapolis whenever in their opinion it may be necessary or expedient.

Term may continue thirty days

May adjourn to any other room.

Clk how appt'd

Take oath.

Give bond.

SEC. 4. The supreme court shall appoint its own clerk, who, before he enters on the duties of his office, shall take an oath of office, similar to that which is prescribed in the second section of this act, which oath shall be administered by one of the judges of said court; and shall also give bond to the state of Indiana in the penalty of five thousand dollars, with at least two sureties, to be approved of by the said court, conditioned for the faithful discharge of the duties of his office, which bond shall be recorded in the said court and filed in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit from time to time, at the instance and for the benefit of any party injured, until the whole penalty shall be recovered thereon.

Clk's office to be inspected.

SEC. 5. The said court shall annually appoint one of the judges thereof, to inspect the clerk's office of the said court, and to report to the next term of said court, the condition in which he found the records and papers, which report shall be recorded.

May appoint an executive officer

SEC. 6. The said judges of the supreme court shall at such time of their court as may be conducive to the purpose of their business, appoint an executive officer thereof, who shall be denominated the sheriff of the supreme court, and who shall hold his office for the term of three years and until his successor is appointed and qualified. In case of vacancy the said judges may file the same either in vacation or term time.

Shall give bond.

SEC. 7. Said sheriff shall execute bonds, payable to the state of Indiana, in the penalty of ten thousand dollars, with freehold security, under the sanction of the judges of said court, conditioned for the faithful discharge of the duties of his office.

Shall attend ct.

SEC. 8. Said sheriff shall by himself or deputy, attend said court in term time and execute all orders of the same, and shall discharge all the duties in relation to said court, which the sheriffs of the several counties in this state are required to perform in relation to the circuit courts. He shall execute all writs and process directed to him from the said court or clerks thereof, and shall be subject to all the penalties, forfeitures, amercements, liabilities, and proceedings, for neglect, refusal, or

Shall execute process.

failure to discharge any of the duties of said office to which sheriffs of the several counties in this state are now subject for neglect, refusal, or failure to discharge similar duties in relation to the circuit courts.

SEC. 9. Said sheriff shall receive the same fees and compensation for all services rendered by virtue of his office and in pursuance of this act, that are now allowed by law to the sheriffs of the several counties for like services: *Provided*, that mileage shall not be allowed said officer, except from the county seat of the county in which process may be executed to the place of service: *And provided also*, that said officer shall be entitled to double postage on all process or other official documents transmitted by mail to any part of this state to be taxed as other costs are.

SEC. 10. It shall be the duty of each and every sheriff within their respective counties to serve, execute, and return all process, writs of execution, and all other writs to them directed from the supreme court, in like manner as they are empowered to serve or execute writs and process issued by the circuit courts within their respective counties and the said sheriffs in performing the duties aforesaid and their securities shall be liable for any non-feasance, misfeasance, or mal-feasance, in their said office to the party injured: *Provided*, that when process of any kind shall be directed to a sheriff of any county (excepting the county where said court holds its session) said sheriff shall be authorized to enclose said process in a letter directed to the clerk of the supreme court and mail it at the post office in his county seat ten days before the regular return day thereof, which shall exonerate him from any liability for failing to make return: *Provided*, that in case he should have money to remit the testimony of the post master that he mailed it, shall be necessary to exempt him from liability.

SEC. 11. Said sheriff shall serve any and all rules, orders, and process which may be issued by the authority of the supreme court against any sheriff or coroner of any county for any neglect, default, refusal, misfeasance, or mal-feasance of duty on or in relation to any process heretofore issued to such sheriff or coroner from the supreme court or the clerk thereof.

SEC. 12. In all cases where said sheriff may be interested or prejudiced, it shall be the duty of the supreme court in term time or any judges thereof in vacation, to appoint a sheriff *pro tempore*, who for that occasion, shall exercise the powers and be subject to all the liabilities of the principal sheriff.

SEC. 13. The supreme court shall have appellate jurisdiction in all cases, both in law and equity, co-extensive with the limits of the state; except that no appeal shall be allowed from any inferior court, to the supreme court, in any criminal case, nor shall a writ of error operate as a supersedeas, in any criminal case.

SEC. 14. There shall be no discontinuance of any suit, process, matter, or thing, returnable to, or depending in the supreme court, although a sufficient number of judges shall fail to attend at the commencement, or any subsequent day

of the term; but if a majority of them shall not attend, any judge of said court, or sheriff attending the same, may adjourn the said court, from day to day, for ten days successively; and if a quorum shall not attend on the eleventh, or having attended one day, shall fail to attend a subsequent day of the term, the court shall stand adjourned until court in course.

Executio's same as those of circuit court.

Other process.

Rules.

Writs of error and appeals.

Proviso, jurisdiction divested, where surseprodeas is refused.

Appeal, when prayed for.

Appellant's bond

Transcript to be transmitted by plaintiff in error in sixty days.

When appellee may demand trial.

SEC. 15. Executions to be issued from the supreme court shall be the same as those which are, or may be, by law directed to be issued from the circuit courts; and the supreme court, shall have power to direct all other writs, process, summonses, forms, and modes of proceedings, to be issued, observed and used by the said court, and shall make rules for that purpose, which shall be entered upon the records thereof, not inconsistent with the constitution and laws of the state.

SEC. 16. Writs of error issuing from, and appeals made to the supreme court, shall extend to all judgments and decrees, given by any of the inferior courts of record, except such judgments, as have been, or may be rendered by any of the inferior courts, in suits which originated before any justice of the peace, where the amount in controversy, exclusive of interest and costs, is under the sum of twenty dollars: *Provided*, That in all cases where judgment is rendered, affirming or reversing the judgment of any justice of the peace, on an appeal to any inferior tribunal, where the amount in controversy, inclusive of interest and costs, is under fifty dollars, if a supersedeas shall be refused, the supreme court shall have no jurisdiction. Every appeal shall be prayed at the term of rendering the judgment, or decree appealed from; and the person appealing shall, by himself or some responsible person in his behalf, in the office of the clerk of the court, from whence the appeal is prayed, give bond and sufficient security, to be approved of by the said court, and within a time to be fixed by the court, to the appellee, for the due prosecution of the appeal; and the penalty of the said bond shall be in a reasonable sum, in the discretion of the court.

SEC. 17. In all appeals and writs of error, the transcript of the record, shall be transmitted by the plaintiff in error, or appellant, to the clerk of the supreme court, within sixty days at most, from the time of taking such appeal, or suing out such writ of error, and shall not be thereafter received, unless for good cause shewn, further time be given by the court; and it shall be the duty of the clerk of the supreme court, whenever any appellant shall fail to file his appeal, agreeably to the requisitions of this section, to make out and deliver to the appellee, a certificate of such failure, which certificate, when presented to the clerk of the court below, shall be sufficient authority for execution and other proceedings in the case, as if no appeal had been granted. The appellee or defendant in error, may demand a trial at the term to which the appeal or writ of error is made returnable, and the court shall not continue the same to another term, without the consent of the appellee or

defendant in error, unless upon good and sufficient cause. No pleadings shall be required on writs of error, except an assignment of errors, to be filed by the plaintiff, on or before the first day of the term, to which the writ of error is returnable, and an answer thereto, by the defendant, to be made at such time as the court shall direct; but the cause shall stand for trial, at the term to which the writ may be returned.

SEC. 18. No writ of error shall operate as a supersedeas, unless the supreme court, or some judge thereof, [in vacation,] after inspecting the errors which shall be assigned upon the transcript of the record, shall order the same to be made a supersedeas; and in such case, the clerk issuing the said writ, shall endorse thereon, that it shall be a supersedeas, and shall be obeyed accordingly. No writ of supersedeas, granted by the supreme court of this state, restraining any of the circuit courts from proceeding to the execution of any judgment hereafter by them rendered, shall be of any force, after four years from and after the time of granting such writ: *Provided*, the supreme court shall not, during that time, have affirmed or reversed such judgment. Upon application of the party interested, to the clerk of the supreme court, he shall certify under his hand and the seal of said court, the time of the expiration of said writs of supersedeas, which certificate, shall be evidence of the same; and when presented to the circuit court, shall be sufficient authority for said court to proceed to execution of said judgment; and it shall not be lawful for the supreme court, or any judge thereof, to award a second writ of supersedeas, to stay proceedings on any judgment, after the expiration of the limited time by this act, for the operation of a writ of supersedeas.

SEC. 19. Before any writ of error shall operate as a supersedeas, it shall be necessary, that a bond, to be approved by the clerk of the supreme court, be given, in like manner, and with the same conditions, and under the same penalties, as is provided in case of appeals; or that bond be given in like manner, in the office of the clerk of the court below, subject to such regulations and conditions, as the supreme court or any judge thereof may prescribe and direct. Writs of error shall be issued as a matter of right, on demand of any person applying for the same, and the clerk of the supreme court, at the time of issuing a writ of error, shall issue a summons, directed to the sheriff of the county in which such defendant in error shall reside, requiring him to summon said defendant, to appear on the first day of the next term of the said court, to answer such error or errors. And if the summons shall appear, by the return of the sheriff or other officer, to have been served ten days before the return day thereof, the same shall stand for trial, agreeably to the provisions of the eleventh [seventeenth] section of this act. If the summons shall be returned not executed, or if by any satisfactory proof, it shall appear to the court, that such defendant or defendants, is or are not an inhabitant or inhabitants of this state, the said court may order, that notice of the pendency of such writ of error, be published in some one of

No pleadings except assignment of errors.

Writs of error, when to operate as supersedeas.

Operation of supersedeas limited to four years.

Clerk to certify that supersedeas is expired.

2nd supersedeas not grantable.

Bond.

Summons.

Notice of pendency &c. when necessary.

the public newspapers; for three weeks successively; after which the same shall be proceeded upon, in all respects, as if process had been returned executed.

SEC. 20. When the plaintiff in error shall obtain a transcript of the record, from the clerk of the inferior court, certified by such clerk, as being a full and complete transcript of the record in the suit or action named, and sealed with the judicial seal of said court, it shall be lawful for such plaintiff, to assign upon the said transcript, all the errors upon which he intends to rely, in order to reverse the said judgment or decree, and file the same with the clerk of the supreme court, who shall receive the same and endorse upon it when filed; and in such case it shall not be necessary for said clerk to issue a writ of error to the court below, but he shall issue a summons to the defendant or defendants in error, in the same manner, as if a writ of error had issued, and the supreme court shall proceed in all respects to determine the same accordingly.

SEC. 21. The plaintiff, except in cases of wills, shall assign errors upon matters of law only, arising upon the face of the proceedings. In cases of wills, the plaintiff in error may assign errors upon matters of fact, as well as upon matters of law, to be determined by the court. If the judgment or decree be affirmed in the whole, the appellant shall pay to the appellee, a sum not exceeding ten per centum, at the discretion of the court on the sum due thereby, besides the costs on the original suit and appeal. If the judgment or decree be reversed in the whole, the appellee shall pay to the appellant such costs as the court in their discretion shall award. If the judgment or decree be reversed in part, and affirmed in part, the costs of the original suit and appeal, may be apportioned between the appellant and appellee, in the discretion of the court. In case of partial reversal, the supreme court shall give such judgment or decree, as the inferior court ought to have given. On appeals and writs of error, it shall be lawful for the supreme court to issue execution, or remand the cause to their inferior court, in order that an execution may be there issued or that other proceedings may be had thereon. When any judgment or decree shall be reversed on account of any error, which shall or may have taken place in the progress of the cause, in the court below, the supreme court shall not reverse the proceedings any further than to include the first error which shall have been committed; and the cause shall be remanded to the court from whence it came, together with the opinion of the supreme court, and with instructions to the inferior court, to commence from the last regular proceedings had thereon, and proceed to trial and judgment, in the same manner as if no proceedings had been had in the supreme court, taking the opinion of the supreme court as their guide: and in such cases, the party having committed the first error, shall pay to the opposite party, such costs as the court shall order. When any writ of error shall have been made a supersedeas, and the judgment or decree so superseded, shall be affirmed in part or in whole, the defendant in error shall be entitled to the same damages, which

Plaintiff may assign errors on transcript &c.

Errors in law and fact when to be assigned.

Damages on affirmation.

On reversal.

Costs, when divided.

C. may issue execution or remand the cause.

Proceedings reversed to first error.

Cause remanded, &c.

are allowed by this act, in case of appeals. If a decree in equity be reversed, the supreme court may either render such a decree as the inferior court ought to have given, or may remand the cause to the inferior court for further proceedings consistent with the opinion of the supreme court.

SEC. 22. No writ of error shall be brought after the expiration of five years from the rendition of the judgment or decree complained of, unless the plaintiff in error, shall have been, at the time when such judgment or decree was made, an infant, feme covert, non compos mentis, imprisoned, or out of the limits of the United States on public business, in which case, the five years shall be computed from the time when such disability ceased.

SEC. 23. No judgment, after the verdict of twelve men, shall be stayed or reversed, where it shall appear to the court, that the merits of the case have been fairly and fully decided by such verdict, and that such verdict and the judgment thereon, might be effectually pleaded in bar to another action brought for the same cause. But nothing herein contained shall be construed to extend to, or cure any errors in the judgment of the court, in questions of law, which may have been brought up before the court, by the pleadings, or otherwise, if they appear upon the record. Whenever, on hearing an appeal or writ of error, the supreme court shall be equally divided in opinion, the suit shall be continued until the next term, and if then the court are still divided, the judgment or decree of the inferior court shall be affirmed.

SEC. 24. The clerk of the supreme court, shall carefully preserve the transcripts of records certified to his court, with the bonds for prosecution, and all papers relative to them, and other cases pending in said court, docketing them, in the order in which he may receive them, that they may be heard in the same order, unless the court for good cause to them shewn, may direct any to be heard out of his turn. The proceedings of every day during a term, shall be drawn up at full length, by the clerk against the next sitting of the court, and such corrections as may be necessary, being first made therein, shall be signed by the presiding judge. When any cause shall be finally determined, the clerk shall make a complete record thereof, not including the transcript from the court below. All writs and summonses, issuing from the supreme court, shall bear test, in the name of the clerk, who issues the same, and shall be dated when issued.

SEC. 25. The supreme court shall have power to impose and administer all necessary oaths and affirmations, to punish by fine and imprisonment, all contempts of authority in any cause on examination before them, and to establish all necessary rules for that purpose, or any other, in conformity to the laws and constitution of this state, not otherwise provided for by law.

SEC. 26. Witnesses shall be summoned in the same manner, have the same privileges, and be subject to the same penalties, which are or may be prescribed by law, respecting those

Costs.

Limitation.

Saving.

Judgment on the merits, neither stayed nor reversed after verdict.

Court divided, suit to be continued till the next term.

Clerk, his duty.

Powers of the court.

Witnesses and jurors, how summoned.

summoned to attend the circuit courts. Jurors may be summoned whenever required, in such manner as the court shall direct, and shall be liable to the same fines and penalties, which are or may be inflicted by law on those summoned to, and attending on the circuit courts.

Depositions.

SEC. 27. For good cause shewn, the supreme court, or any judge thereof in vacation, may grant commissions for the examination of witnesses; and the clerk of the said court, where any witness shall be about to depart from the state, or shall by age, sickness, or otherwise, be unable to attend to the court, or when the claim or defence of any party, or a material part thereof, shall depend on a single witness, may, on affidavit made and filed, issue a commission for taking the deposition of such person *de bene esse*, to be read at the trial, in case the witness shall be out of the jurisdiction of the court, or unable to attend. But the party obtaining such commission, shall give reasonable notice to the opposite party, of the time and place of taking such depositions.

Parties may appear in person or by attorney.

SEC. 28. In the supreme court, the parties may manage their own causes personally, or by their attorneys properly authorized for that purpose, or by such attorneys at law, as by the rules of said court, may be permitted to manage causes therein. Non-resident plaintiffs in error and appellants shall give security for costs when required to do so by the court.

Seal.

SEC. 29. The supreme court shall have a seal, to be devised by the judges thereof, and the description of the same in writing, shall be deposited in the office of the secretary of state, and remain a public record. The opinions and determinations of the said court, shall be in writing, except in cases and on subjects of an unimportant nature, which opinions and determinations, shall be recorded by the clerk, in a book kept for that purpose.

Opinions of the court to be in writing.

Sup. court may make allowance to sheriff for services, fuel, &c.

SEC. 30. The supreme court of the state of Indiana, is hereby authorized to make such allowances to the sheriff of said court or other officer who may attend on said court, as they may deem reasonable for his services, while in attendance in term time; as also an allowance for all fuel, stationary and other necessary articles for the use of said court, which may be furnished by said officer; and also to allow the clerk of said court, any sum they may deem reasonable, for record books and stationary, by said clerk furnished for the use of said court, which said allowances shall be entered on the order book of said court, setting forth, specifically, for what service or article the allowance was made; a copy of which orders certified by the clerk of said court, shall be sufficient authority for the auditor of state to audit the amount so allowed; and the treasurer [of state] shall pay the same, out of any moneys appropriated to defray the expenses of the judiciary department.

And to clerk for books, &c.

Gov. shall release prisoner when judgment is rendered.

SEC. 31. Whenever a judgment of a circuit court by which any individual shall be imprisoned in the state prison, shall be reversed by the supreme court, the supreme court shall cause the governor to be immediately informed thereof, whose duty it shall be to issue an order for his release forthwith. The said

judges of the supreme court or either of them, may occupy rooms in the building on the Governor's Circle for consultation rooms or offices for all or either of them.

SEC. 32. All process shall be deemed and taken to be returnable at the term fixed in this act although a different day may be named in said process.

CHAPTER XXVI.

AN ACT relative to Crime and Punishment.

[APPROVED FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That every person duly convicted of treason, shall suffer death.

SEC. 2. That every person of sound memory and discretion, who shall unlawfully kill any reasonable creature in being, and under the peace of this state, with malice aforethought, and be duly convicted thereof, shall be deemed guilty of murder, and suffer death.

SEC. 3. That every person, who, without malice, either express or implied, shall unlawfully kill another person, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor in the state prison, for not less than two nor more than twenty-one years, and be fined in a sum not exceeding one thousand dollars.

SEC. 4. That every person, who shall in the night time break and enter into a mansion house, store house, out house or boat, with intent to commit a felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two, nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

SEC. 5. That every person who shall forcibly and feloniously take from the person of another, any money, goods or other article of value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two, nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

SEC. 6. That every person who shall feloniously steal, take and carry, lead or drive away, the personal goods of another, to the value of five dollars or upwards, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be fined in any sum not exceeding double the value of the goods stolen, and be imprisoned at hard labor in the state prison, for not less than two, nor more than fourteen years, and shall also be

Petit larceny.

disfranchised and rendered incapable of holding any office of trust or profit during life, or for any determinate period. And every person who shall feloniously steal, take and carry, lead or drive away, the personal goods of another, of the value of any sum less than five dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall, if a male, be fined in any sum not exceeding five hundred dollars, and be imprisoned at hard labor in the state prison, for not less than one year, and disfranchised and rendered incapable of holding any office of trust or profit during life, or for any determinate period, or fined and disfranchised, and rendered incapable of holding any office of trust or profit as aforesaid, and imprisoned in the jail of the proper county, for any determinate period of time; or if such convict be a female, she shall be imprisoned in the jail of the proper county, for any length of time not exceeding sixty days, and rendered incompetent as a witness in any court of justice during life, or for any determinate period of time, at the discretion of the jury. And any person, male or female, shall upon a second conviction of petit larceny, in any court within this state, suffer the pains and penalties prescribed for those convicted of grand larceny.

Second offence punishable as grand larceny.

Receiving, &c. stolen goods.

SEC. 7. That every person who shall buy, conceal or receive, any stolen goods or chattels, knowing the same to be stolen, with intent to defraud the owner, shall upon conviction thereof, be punished as those are punished who are principally guilty. And every person who shall agree to, and actually compound for any stolen goods, shall upon conviction thereof, be fined in double the value of such goods.

Compounding felony.

Bonds, notes &c considered goods.

SEC. 8. That bonds, bills, notes and other instruments of writing, shall be considered as personal goods, of which larceny may be perpetrated.

Forgery.

SEC. 9. That every person who shall falsely make, deface, destroy, alter, forge, or counterfeit, or cause or procure to be falsely made, defaced, destroyed, altered, forged or counterfeited, or willingly assist in falsely making, defacing, destroying, altering, forging or counterfeiting any record, deed, testament, will, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, bank note, post note, receipt for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or endorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory or promissory note, for money or property, or any order or draft for the payment of money or property, or any written contract of any nature or kind whatever, or any other instrument in writing whatever, with intent to defraud any person or persons, body politic or corporate; or who shall utter or publish as true, any false, defaced, destroyed, altered, forged or counterfeited record, deed, will, testament, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, receipt or acquittance for money or property, power of attorney, certificate of a justice of the peace or other public officer, auditor's warrant, treasury note, coun-

ty order, commission or pardon, acceptance of a bill of exchange, draft or order, endorsement or assignment of any bill of exchange, promissory note for money or property, bond, power of attorney or writing obligatory, or any order or draft for the payment of money or property, any written contract of any nature or kind whatever, or any other instrument in writing, knowing the same to be false, defaced, destroyed, altered, forged or counterfeited, or who shall forge or counterfeit any gold or silver coin, which now is, or at any time hereafter may be current, or in circulation in this state, or utter or pay, or tender in payment, any such false, forged or counterfeited coin, or any bank note or notes, bill or bills, knowing the same to be forged or counterfeit, shall be deemed guilty of forgery, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for a period not less than two, nor more than fourteen years, and fined in any sum not exceeding one thousand dollars.

SEC. 10. That if any person shall knowingly retain in his possession, any die or dies, plate or plates, or other apparatus made use of in forging or counterfeiting any gold or silver coin, which is or may be current and in circulation within this state, or in forging or counterfeiting bank notes, such person shall upon conviction of offending as aforesaid, be imprisoned at hard labor in the state prison, for any period of time not longer than five years, and not less than two years, and be fined in any sum not exceeding one thousand dollars.

Retaining counterfeiting apparatus.

SEC. 11. That every person who shall unlawfully and forcibly, have carnal knowledge of a woman against her will, or of a woman child under twelve years of age, shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for any period of time not exceeding twenty-one years, nor less than five years. And in prosecutions for the said offence, proof of penetration shall be deemed sufficient evidence of the commission thereof.

Proof of rape.

SEC. 12. That every person who shall forcibly steal and take, or forcibly and unlawfully arrest any man, woman or child, and carry or convey such man, woman or child, to parts without the state of Indiana, or aid or abet therein, or who shall forcibly and unlawfully take or arrest, or aid and abet in forcibly and unlawfully taking or arresting, any person or persons whatever, with intent to take such person or persons to parts without the state as aforesaid, without having first established a claim upon the services of such person or persons, according to the laws of this state or of the United States, shall be deemed guilty of kidnapping; and upon conviction thereof, shall be fined in any sum not less than one hundred, nor more than five thousand dollars, and be imprisoned at hard labor in the state prison, for any term of not less than two, nor more than fourteen years.

Kidnapping.

SEC. 13. That every person who shall, on purpose and of malice aforethought, unlawfully disable the tongue, put out an eye, slit the nose, cut or bite off the nose, ear, lip or other

Malicious mayhem.

member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for a term of not less than two, nor more than fourteen years, and fined in any sum not exceeding one thousand dollars.

Arson.

SEC. 14. Every person who shall wilfully and maliciously burn the dwelling house, out house, barn, stable, boat, water craft, mill, mill house, distillery, still house, manufactory, mechanic's or artificer's shop, store house, building or room, occupied as a shop or office for professional business, or printing office of another, or any public bridge, court house, jail, market house, church or meeting house, school house, seminary, or college edifice, or building belonging thereto, or other public building whatever, shall be deemed guilty of arson, and upon conviction, be fined not exceeding double the value of the property destroyed, and be imprisoned in the state prison at hard labor, for a period not less than two, nor more than ten years; and should the life or lives of any person or persons be lost thereby, such offender shall be deemed guilty of murder, and shall suffer death accordingly.

Bigamy.

SEC. 15. That if any person, being married, shall marry again, the former husband or wife being alive, and the bond of matrimony still subsisting and undissolved, such person so offending, shall be deemed guilty of bigamy, and upon conviction thereof may, at the discretion of the jury, be fined in any sum not exceeding one thousand dollars, or be imprisoned at hard labor in the state prison, for any term of time not exceeding five nor less than two years.

Bribery.

SEC. 16. That if any judge or other officer entrusted with the administration of justice, shall take any undue reward to influence his behavior in office, or if any person shall offer or give any such reward, he or they so offending as aforesaid, shall be fined in any sum not exceeding treble the amount of the sum so offered, given or received, and be imprisoned at hard labor in the state prison, for any term of time not exceeding ten, nor less than two years.

Negligent escape.

SEC. 17. That if any officer, whose duty it may be to have the custody of prisoners charged with, or convicted of any offence against any law of this state, shall negligently suffer any prisoner, so as aforesaid charged with, or convicted of an offence, to escape out of his custody, he shall be fined in any sum not exceeding ten thousand dollars. And if any such officer, shall voluntarily suffer any such prisoner, so as aforesaid charged or convicted, to escape out of his custody, he shall suffer the punishment or penalties, by law provided against, or incident to the offence with which such escaping person may have been charged, or whereof he or she may have been convicted, at the time of such escape; and if any private person shall effect the escape of any such prisoner, such private person shall in like manner, suffer the punishment provided against or incident to the offence with which such escaping per-

Voluntary escape.

Effecting escape

son may have been charged, or whereof he or she may have been convicted, at the time of such escape: *Provided*, that if in either of two cases last above provided against, the punishment provided by law, against or incident to the offence with which the escaping person may be charged, or whereof he or she may have been convicted, be death, the officer so as aforesaid voluntarily suffering, or the private person so as aforesaid effecting the escape of such person charged or convicted as last aforesaid, shall be fined in any sum not exceeding ten thousand dollars, and be imprisoned at hard labor in the state prison, for any term of time not exceeding twenty-one, nor less than two years.

son may have been charged, or whereof he or she may have been convicted, at the time of such escape: *Provided*, that if in either of two cases last above provided against, the punishment provided by law, against or incident to the offence with which the escaping person may be charged, or whereof he or she may have been convicted, be death, the officer so as aforesaid voluntarily suffering, or the private person so as aforesaid effecting the escape of such person charged or convicted as last aforesaid, shall be fined in any sum not exceeding ten thousand dollars, and be imprisoned at hard labor in the state prison, for any term of time not exceeding twenty-one, nor less than two years.

SEC. 18. That every person who shall knowingly or designedly, by any false pretence or pretences whatever, obtain from another, any goods, wares, or merchandize, bonds, bills of exchange, bank notes, or any securities or orders for the payment of money, or transfer of goods, or any valuable thing with intent to defraud such person, shall be fined in any sum not exceeding double the value of the property, amount or value so obtained, and be imprisoned, at hard labor in the state prison, for any term of time not less than two, nor more than seven years.

Obtaining goods, &c. by false pretences.

SEC. 19. That every person who shall alter the mark or brand, of the horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog of another, or mark or brand the same, with intent to steal such horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog, shall if the value of the animal or animals so marked be five dollars or upwards, be subject to the punishment inflicted on those guilty of grand larceny; and if the value of such animal or animals, be less than five dollars, such person shall be subject to the punishment inflicted on those guilty of petit larceny.

Altering brands, marks, &c.

SEC. 20. That every person who may give or accept a challenge to fight a duel, or who shall agree to go out of this state, for the purpose of fighting a duel, or who shall knowingly carry to another person, a challenge to fight a duel, shall upon conviction thereof be fined in any sum not exceeding two thousand dollars, and be imprisoned, not exceeding one year in the jail of the proper county.

Giving, accepting, or carrying a challenge.

SEC. 21. That every person who shall actually fight a duel, shall on conviction thereof, be fined in any sum not exceeding five thousand dollars, and be imprisoned, in the jail of the proper county, for any term of time not exceeding one year; and should either party to a duel be killed, the survivor shall be deemed guilty of murder, and shall suffer death.

Fighting duel.

Killing in a duel, murder.

SEC. 22. That every person, who having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter, in which by law an oath or affirmation may be required, shall under or upon such oath or affirmation, swear or affirm, wilfully, corruptly and falsely, touching a matter material to the issue or point in question, shall be deemed guilty of perjury; and every person who shall suborn, cause or procure

Perjury.

Subornation of perjury.

another person to swear or affirm as aforesaid shall be deemed guilty of subornation of perjury; and every person guilty of perjury, or subornation of perjury as aforesaid, shall be fined in any sum not exceeding one thousand dollars, and be imprisoned at hard labor in the state prison, for any term of time not exceeding twenty-one, nor less than two years.

Perj. in voluntary affidavits.

SEC. 23. That every person who shall wilfully, corruptly, and falsely, before any justice of the peace, or other officer authorized to administer oaths, under oath or affirmation, make any false certificate, affidavit or statement of any nature, or for any purpose whatever, shall be deemed guilty of perjury, and upon conviction thereof, shall be liable to the punishment and penalties prescribed in the twenty-second section of this act.

Requisites in indictments for perjury.

SEC. 24. That in indictments for perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court, officer or authority, the oath alleged to have been taken was administered, averring such court or officer to have had competent authority to administer the same, together with the proper averment or averments to falsify the matters whereof the perjury or perjuries charged therein may be assigned; without setting forth the bill, answer, information, indictment, or any part of the record or proceedings, either in law or in equity, other than as aforesaid, and without setting forth the commission or authority of the court or officer, before whom the perjury may be alleged to have been committed.

Assaults with intent to ravish, murder, &c.

SEC. 25. That every person who shall perpetrate an assault, or an assault and battery with intent to commit a rape, murder, robbery, or other felony, shall upon conviction thereof, be imprisoned at hard labor in the state prison, for any term of time not exceeding fourteen, nor less than two years, and be fined in any sum not exceeding one thousand dollars.

Assault and battery.

SEC. 26. That every person who shall, in a rude, insolent, or angry manner, unlawfully touch, strike, beat or wound another, shall be deemed guilty of an assault and battery, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment, for any term of time not exceeding six months.

Affray.

SEC. 27. That if two or more persons, shall by agreement fight in any public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof, shall be fined in any sum not exceeding twenty dollars, or imprisoned for any term of time, not exceeding five days each.

Unlawful assemblage.

SEC. 28. That if three or more persons shall assemble together to do an unlawful act, and separate without doing the same or advancing towards it, they shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

Rout.

SEC. 29. That if three or more persons shall meet together to do an unlawful act, upon a common cause or quarrel, and make advances towards the commission thereof, they shall be deemed guilty of a rout, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars, or

be imprisoned for any term of time not exceeding sixty days each.

SEC. 30. That if three or more persons shall actually do an unlawful act of violence, either with or without a common cause or quarrel, or even do a lawful act, in a violent and tumultuous manner, they shall be deemed guilty of a riot, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, and be imprisoned, for any term of time not exceeding three months each.

SEC. 31. That every person, who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully disable the tongue, or eye, or slit or bite the nose, ear, or lip of another, shall be deemed guilty of mayhem, and upon conviction thereof, shall be fined in any sum not exceeding two thousand dollars, nor less than five dollars, and may be imprisoned for any term of time not exceeding six months, and not less than twenty days.

SEC. 32. That every person who shall obstruct the execution of any legal process, or who shall forcibly free any person from legal arrest, knowing such person to be under arrest, shall upon conviction thereof, be fined in any sum not exceeding ten thousand dollars, or be imprisoned for any term of time not exceeding six months.

SEC. 33. That every person who shall maliciously or maliciously destroy or injure, or cause to be destroyed or injured, any property of another, either real, personal, or mixed, or any public property, shall be deemed guilty of malicious trespass, and upon conviction thereof, shall be fined in any sum not exceeding two fold the value of the property destroyed, or of the damage done, and be imprisoned for any term of time not exceeding twelve months.

SEC. 34. That every person who shall cut, box, bore or otherwise injure any tree or sapling, on the land of any other person or persons, or on land belonging to the state, or to any county or township therein, or on any land reserved or granted for the use of schools or seminaries, or without a license so to do from the owner or owners thereof, or from other competent authority, or who, without license as aforesaid, shall take away or remove from any such lands, any timber, stone or other valuable article, shall be deemed guilty of a trespass, and upon conviction thereof, shall be fined in treble the value of the tree or sapling so as aforesaid, or of the property so as aforesaid taken away or removed.

SEC. 35. That every person who shall violently take or keep possession, of any lands or tenements, with menaces, force and arms, and without authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

SEC. 36. That every person who shall, without the consent of the near relatives of a deceased person, or without the consent of such deceased person being had in his or her lifetime, remove the dead body, or corpse of such deceased person from

interment, in any public or private burying ground, shall upon conviction thereof, be fined in any sum not exceeding one thousand dollars,

Encouraging escape of slaves &c.

SEC. 37. That if any person, without proper authority, shall give to any one owing service in any state or territory within the United States, a certificate or other testimonial of emancipation, or shall knowingly harbor or employ any such one owing service as aforesaid, or held as a slave, who may have come to this state without the consent of his or her owner, or shall encourage or assist any such one to desert or not go with his or her owner, or shall use any violence, or other means to prevent, let or hinder any person, in lawfully recovering any fugitive, slave or person owing service, such person so offending, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be liable for damages to any person or persons injured by any of the said acts.

Nuisance.

SEC. 38. That every person who shall erect, or continue and maintain, any public nuisance, to the injury of all, or any part of the citizens of this state, shall be fined in any sum not exceeding one hundred dollars. And after any person shall have been convicted of erecting or maintaining any public nuisance as aforesaid, the circuit court may make it a part of the judgment upon such conviction, that such nuisance be removed by the sheriff. And no inquest, proceedings or judgment, under or in accordance with the laws of this state, allowing and regulating the writ of *ad quod damnum*, shall bar any prosecution under this section.

Spurious money

SEC. 39. That if any person shall sign, test, endorse, issue, pass, circulate or exchange, any due bill, promissory note, or note purporting to be a bank note, or other instrument of writing for the payment of money or property, or for the performance of any contract, purporting to be the act of any bank, company, secret society or set of men, other than those whose names may be expressed upon the face of such writing, such person so offending, shall upon conviction thereof, be fined in any sum not exceeding ten thousand dollars, nor less than ten dollars, and shall moreover be liable to any person injured, to the full amount made payable by such writing: *Provided*, that the provisions of this section shall not be construed to affect any bank, legally chartered, nor any mercantile house, touching any note or other security executed or issued, in the course of common business, on common paper and in common writing.

Proviso.

SEC. 41. That every person who shall sell any unwholesome provisions, for wholesome provisions, knowing the same to be unwholesome, shall on conviction, be fined in any sum not exceeding one hundred dollars.

Unwholesome provisions.

NOTE.—The 40th section of the above act is repealed: see "an act to amend an act relative to crime and punishment," approved February 7, 1835, re-printed in this volume.

SEC. 42. That every person who shall erect, keep up, Obstructing navigation. maintain or continue, any mill dam or other artificial obstruction, in or across the bed or channel of any navigable stream or river, the bed or channel whereof may not have been surveyed and sold as land by the United States, shall upon conviction thereof, be fined in any sum not less than three dollars nor more than five hundred dollars, for each and every week such dam or other artificial obstruction, may have been kept up, maintained or continued as aforesaid.

SEC. 43. That if any ferryman, ferry owner, ferry keeper, Negligence and extortion of ferryman. or keeper of a toll bridge, shall in his own person, or by any agent or person in his employment, demand or receive, any greater fee or sum, for or on account of ferriage, than is or may be established or fixed, by the proper board doing county business, as the rate or rates of ferriage to be received by such ferryman, ferry keeper or ferry owner; or shall neglect to cause the banks of the creek or river, over or upon which the ferry kept or owned by him may be situate, to be kept in good condition and repair, for the passage of men, horses and loaded wagons, or shall fail or neglect to give all due attendance to the ferry or bridge, kept or owned by him, in the day time, according to the laws in force for the time being, for the regulation of ferries or bridges, he shall upon conviction, of any one act of extortion, or neglect aforesaid, be fined in any sum not exceeding forty dollars.

SEC. 44. That every person who shall attempt to influence Influencing jury a jury, by promises, persuasions, entreaties, money, entertainments, or the like, or who, being a juror, shall take gain or profit, for giving a verdict, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapable of serving as a juror.

SEC. 45. That if any person shall maliciously, and without Malicious prosecution. probable cause, attempt to cause an indictment to be found against any person or persons; or if two or more persons shall conspire together, to cause an indictment to be found against any person or persons, such person or persons, so sought to be indicted, being innocent, such person or persons so offending, shall be fined in any sum not exceeding one thousand dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapacitated to serve as a juror, give evidence as a witness, or vote at any election.

SEC. 46. That every person who shall frequently excite Barratry. and stir up quarrels, between or among the citizens of this state, at law, or otherwise, shall be deemed a common barrator, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned for any term of time not exceeding six months.

SEC. 47. That every person who shall take upon himself, Usurpation. to exercise and officiate in any office, or place of authority in this state, without being thereunto legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

Official negli-
gence.

SEC. 48. That any clerk of the circuit court, constable, coroner, sheriff, justice of the peace, or other officer entrusted with the administration of justice, who shall be guilty of manifest and wilful negligence, in the discharge of official duty, to the injury of any person, or who shall, in the administration, or under color of his office, be guilty of any oppressive act, shall upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Extortion.

SEC. 49. That if any officer shall unlawfully, and by color of his office, demand or receive any money or thing of value, which may not be due to him, or more than may be due, or before the same may be due, he shall be deemed guilty of extortion, and upon conviction thereof, shall be fined ten fold the amount, so as aforesaid extorted: and in a prosecution under this section, it shall be sufficient to prove the accused an officer, *de facto*.

Official negli-
gence of clerks.

SEC. 50. That if any clerk of the supreme or circuit courts, shall neglect or refuse to perform, or cause to be performed, any duty required of them by a law of this state, entitled "an act concerning clerks," or should any clerk of the said circuit courts fail or neglect to make return, according to law, of any election for representatives to the congress of the United States, or of governor, or lieutenant governor of this state, he shall be deemed guilty of a high misdemeanor, and besides being liable, on conviction thereof, on impeachment, to removal from office, shall moreover, on conviction, upon presentment or indictment in the circuit court, be fined in any sum not exceeding five hundred dollars.

Official negli-
gence of semi-
nary trustee.

SEC. 51. That every trustee or trustees of any county seminary, and any clerk of the circuit court, sheriff, justice of the peace or other officer, who shall neglect, fail or refuse to perform any duty required of such officer, by the laws in force, for the time being, on the subject of county seminaries, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, nor less than five dollars.

Failing to give
assessor a list of
taxables.

SEC. 52. That any person who shall fail or refuse, to deliver a list of his or her taxable property when called on therefor, according to law, to an assessor, having a right to demand the same, shall on conviction thereof, be fined in any sum not exceeding fifty dollars.

Offences against
the revenue.

SEC. 53. That any and all unlawful acts, committed by any public officer or other person, and any and every neglect of duty, in any public officer, whereby the revenue, either for state or county purposes may be diminished or defrauded, or whereby the collection or payment thereof, into the appropriate treasury may be prevented, hindered or retarded, shall be deemed a fraud against the revenue, and every officer or other person guilty of any such act, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Exhibiting
shows without
license.

SEC. 54. That every person who shall, in proper person or by an agent, shew or exhibit any animal or animals, or other natural curiosity, or any wax work or other figures, or any feats in tumbling, rope or wire dancing, for gain, without being li-

censed according to law, so to shew or exhibit, shall be fined in any sum not exceeding twenty dollars.

SEC. 55. That every person who shall, in proper person or by an agent, vend any merchandise which may not be the product of the United States, without having a license or permit so to do, as is or may be designated and required by law, shall be fined in any sum not exceeding one hundred dollars.

SEC. 56. That every person, not being licensed according to law to vend spiritous liquors by retail, who may barter or sell any spiritous liquor, to be drank in his or her house, out house, yard or garden, or who may barter or sell any such spiritous liquor, by a less quantity than a quart at a time, shall be fined in any sum not less than two, nor more than twenty dollars.

SEC. 57. That if any licensed tavern keeper shall, directly or indirectly, ask, demand, or receive, any greater price or higher rates, for any article furnished in the way of his business, than may be fixed and published by him in his schedule of tavern rates, or who shall knowingly neglect, for one whole day, to keep up in the most public room in his tavern, a fair list of the aforesaid rates so by him fixed and published, he or she so offending, shall be fined in any sum not less than five dollars, nor more than fifty dollars.

SEC. 58. That every person not being a traveller, who shall wear or carry any dirk, pistol, sword in a cane, or other dangerous weapon concealed, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

SEC. 59. That every person who shall live in open and notorious adultery or fornication, shall upon conviction thereof, be fined, if a male person, in any sum not exceeding three hundred dollars, or if a female, be imprisoned for any term of time not exceeding three months.

SEC. 60. That every person who shall be guilty of open and notorious lewdness, or of any grossly scandalous and public indecency, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

SEC. 61. That every person who shall play at any game or games for money, or other valuable consideration, or who shall bet on the hands or sides of such as do play, at a tavern or place licensed to vend spiritous liquors by retail, or in any out house or appendage of the same, shall on conviction thereof, be fined in any sum not exceeding seventy nor less than ten dollars, and be recognized with sufficient security, for his good behavior for one year, which recognizance shall be forfeited by a second offence, within the time aforesaid.

SEC. 62. That every person who shall, by playing or betting at, or upon any game or wager whatsoever, either lose or win any sum of money or article of value, shall upon conviction thereof, be fined in any sum not exceeding fifty dollars.

SEC. 63. That if any person by fraud, circumvention, deceit, or evil practice, in playing at cards, dice, or other game, or by sharing in the stakes or wager, shall win or obtain any

sum of money, or valuable article, the person so offending shall, on conviction thereof, be fined in any sum not less than five, nor more than one thousand dollars, and be bound, with security, in a recognizance for his good behavior for one year.

Keeping gaming tables.

SEC. 64. That every keeper or exhibiter of either of the gaming tables called A B C or E O tables, billiard table, roulette, spanish needle, shuffle board, faro bank, or other gaming table or establishment, for the purpose of winning or gaining money, or any other article or property of value, either directly or indirectly, shall upon conviction thereof, be fined in any sum not less than fifty nor more than one thousand dollars, and be bound in a recognizance, with good security, to his good behavior, for one year.

Tavern keepers suffering gaming

SEC. 65. That every tavern keeper and retailer of spiritous liquors, foreign and domestic groceries, who shall suffer any game or games, prohibited by this act, to be played in his tavern, ordinary, or grocery, or in any out house appendant thereto, shall upon conviction thereof, be fined in any sum not less than fifty, nor more than two hundred dollars, and shall forfeit his license as a tavern or grocery keeper, and not to be re-licensed for one year from the date of such conviction.

Disturbing religious societies, &c.

SEC. 66. That if any person shall interrupt, disturb, or molest any religious society, or any member thereof, when met, or meeting together for public worship, or shall sell or give away, any spiritous liquors, at any booth, wagon, or open place within one mile of any collection of a portion of the citizens of this state, convened for the purpose of worship, or shall interrupt, disturb, or molest any collection of the people convened for any lawful purpose, or shall make any contention or disturbance at any public house, court, election, or other lawful public meeting, such person shall upon conviction thereof, be fined in any sum not exceeding ten dollars, nor less than one dollar.

Keeping unenclosed salt petre caves.

SEC. 67. That if any person or persons, being the owner or owners, occupier or occupiers, of any cave of salt petre, epsom salts, or other caves of like noxious qualities, shall permit the same to remain unenclosed and exposed to the stock, cattle, or horses of the neighborhood, such person or persons so offending, shall be liable to a fine of ten dollars, for every day such nuisance may be continued, recoverable as in other cases; which when collected, shall be paid over to the proper agent for county seminary purposes; and shall moreover be liable in damages, to the party injured by his, her, or their stock using the same.

Assault.

SEC. 68. That every person who shall assault another, shall be fined in any sum not exceeding three dollars.

Infringement of ferry rights.

SEC. 69. That every person, other than a licensed ferryman, who may, for fee or reward, ferry any person over any creek or river, within two miles of any public ferry, licensed as such, and established on such creek or river, shall be fined in the sum of three dollars for every offence.

Vending cards and obscene books.

SEC. 70. That if any person, shall vend or cause to be vended, any playing cards, or any obscene book, pamphlet, or

print, he shall on conviction thereof, be fined in any sum not less than one, nor more than three dollars for every such pack of cards, book, pamphlet, or print vended.

SEC. 71. That if any person, of the age of fourteen years or upwards, shall be found, on the first day of the week commonly called Sunday, rioting, hunting, fishing, quarrelling, or at common labor, works of necessity and charity only excepted, such person shall be fined in any sum not less than one, nor more than three dollars: *Provided*, that nothing herein contained, shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travellers, families removing, keepers of toll bridges attending the same, or ferrymen acting as such.

Breach of Sabbath.

Proviso.

SEC. 72. That every tavern keeper, or other person who may barter or sell any spiritous liquor, to any person on Sunday, except to travellers, and in cases of sickness, and every tavern keeper or grocer, who shall sell or give any spiritous liquor at any time to a person under the age of fourteen years without the consent of parent or guardian, shall upon conviction thereof, be fined in any sum not exceeding three dollars.

Selling spirits on Sabbath.

Or to minors.

SEC. 73. That every person, of the age of fourteen years or upwards, who shall profanely swear, aver, curse, or imprecate, by, or in the name of God, Jesus Christ, or the Holy Ghost, shall be fined for each offence, not less than one, nor more than three dollars: but the fines imposed upon one person for violations of this section, committed on one day, shall not exceed ten dollars.

Profane swearing.

SEC. 74. That every person, who shall play bullets, along or across any highway, or the street of any town or village, or shall run horses, or shoot at a mark, within the limits of such town or village, or shoot along, or across any such street, shall upon conviction thereof, be fined in any sum not exceeding three dollars.

Playing bullets, &c. on road, or in town.

SEC. 75. That every person, who shall aid, assist, abet, counsel, encourage, hire, or command any other person or persons, to commit, or in committing any crime or offence, in this act mentioned, shall upon conviction thereof, suffer the same punishments and penalties, above in this act prescribed to be inflicted upon principal offenders.

Abetting crimes.

SEC. 76. The punishment of death, in this act prescribed, shall be inflicted by hanging by the neck, at such time, not less than fifteen days after conviction, as the court may direct.

Punishment by hanging.

SEC. 77. That in all offences in this act contained to which the affixed penalty does not exceed three dollars, exclusive jurisdiction is given to justices of the peace of the proper county.

Exclusive jurisdiction of J. P.

SEC. 78. That all prosecutions in the circuit courts, under this act, shall be instituted upon presentment or indictment, found by the grand jury of the county within which an offence may have been committed, and the jury inquiring of the guilt of an accused party, shall also assess the amount of fine or other punishment, or penalty to be inflicted upon the offender, unless such punishment be death. And upon a plea of guilty

Prosecutions by presentment or indictment.

Jury shall assess the fine.

Except upon plea of guilty.

to an indictment, the court receiving such plea, shall assess such punishment, as to the extent thereof.

Crimes deemed infamous.

Sec. 79. That every person, who may hereafter be convicted of the crimes of murder, treason, rape, arson, manstealing, or wilful and corrupt perjury, shall ever after such conviction be deemed infamous, and shall be incapable of holding any office of trust, honor or profit, voting at any election, serving as a juror, or giving evidence in any court of justice; and no release, reprieve, or pardon, shall restore such person or persons to the privileges aforesaid.

Pardon shall not restore.

Costs upon conviction.

Sec. 80. That in all cases of conviction of any offence, named in this act, the costs of prosecution shall be included in the judgment rendered against the convict, unless the jury expressly find otherwise.

Challenges to jury.

Sec. 81. That in all prosecutions for any capital offence, each party accused shall have the right to challenge twenty jurors peremptorily, and in all prosecutions for any offence, punishable by imprisonment in the state prison, each party accused shall have the right to challenge ten jurors, peremptorily; and in all other cases of prosecution, each party accused may challenge three jurors peremptorily, and no more.

Trial of culprits standing mute.

Sec. 82. That if any person, upon being arraigned upon an indictment, shall stand mute and refuse or fail to plead thereto, the court shall cause the plea of not guilty to be entered for such person, and proceed to trial, judgment and execution, as if such person, had pleaded to such indictment, in his own proper person.

Limitation of prosecutions.

Sec. 83. That all criminal prosecutions for offences, the affixed penalty for which is three dollars, or less, shall be commenced within thirty days next after the offence may have been committed, and not after.

Limitation.

Sec. 84. That all prosecutions for offences, except those the fixed penalties of which do not exceed three dollars, and except treason, murder, arson, burglary, man-stealing, horse-stealing and forgery, shall be instituted within two years next after the offence charged therein may have been committed, and not after: *Provided*, that if the person or persons, against whom such prosecution may be instituted, shall not have been an inhabitant, or usually a resident of this state, within and during the said term of two years, such prosecution may be instituted any time within two years next after such person or persons may have become an inhabitant, or usually resident of this state as aforesaid.

Fines, how replevied.

Sec. 85. That every person convicted of any offence against the penal laws of this state, may entitle himself to a stay of execution, for the fine assessed against him and for the costs adjudged against him, or to a replevy of such execution, for three months from the rendition of judgment therefor, by complying with the same provisions which according to the laws for the time being in force, relative to a stay of execution, or replevy thereof, in civil cases, would entitle him to such stay or replevy, and any recognizance of bail, entered pursuant to the provisions of this section, upon the docket of a justice of the

Effect of replevy.

peace, or upon the record of the circuit court, and replevin bonds executed pursuant to the said provisions, shall have the same force and effect, as if the same were entered or executed in a civil case. And nothing herein contained shall authorize the circuit court, or a justice of the peace, to suffer a defendant to go at large until such fine and costs be either paid or replevied.

Def't in custody until fine and costs are replevied.

Sec. 86. That when any person shall be convicted and sentenced to imprisonment in the state prison, the clerk of the court in which such person may have been convicted, shall certify a copy of the sentence of the court, and deliver the same to the proper sheriff, or other officer acting as such, who, when he shall deliver such convict to the keeper of the said state prison, shall also hand over to the said keeper the said copy of the sentence of the court, and take from such keeper, a certificate of the delivery of such convict.

Penitentiary sentence, how certified to keeper.

Sec. 87. That a sheriff, when conveying a prisoner to the state prison aforesaid, shall have the same authority to demand the assistance of any of the people of this state, as if he were acting in his proper county, and all persons shall render to such sheriff assistance, in securing such prisoner, and conveying him or her as aforesaid, under the same penalties prescribed against failing to assist sheriffs in their proper counties.

Sh'ff conveying conv'ct may call aid.

Penalty for disobeying.

Sec. 88. That on the conviction of any female, of any offence in this act named, one or all of the penalties whereof is imprisonment in the state prison, it shall and may be lawful for such female, in lieu of such imprisonment in the state prison, to be imprisoned in the jail of the proper county, at hard labor, under the direction of the jailer.

Female convict to be sent to co. jail.

Sec. 90. That it shall be the duty of the circuit courts, to make an order fixing the amounts in which each person indicted shall be held to bail, and the clerks upon issuing process against such person, shall endorse, upon the process, a memorandum of the said amount of bail required; and the sheriff, in taking security for the appearance of such indicted person, shall govern himself accordingly, and recognizances, for the appearance of any person accused of offences, taken and acknowledged before a proper officer, shall not be void for the want of form.

C't. shall order am't of recog'ce to be taken by sheriff.

Recog. not void for form.

Sec. 91. That whenever any attachment shall issue against any person or persons, returnable to any day beyond the term of the court, at which the same may be ordered, the court ordering the issuing thereof, shall also fix the amount in which the said person or persons shall severally be held to bail, making an order accordingly, and the clerk issuing such attachments, shall endorse a memorandum of the amount aforesaid, and the officer executing such attachments shall take a recognizance or recognizances accordingly, which recognizances shall stand on the same footing with recognizances acknowledged in a court of record, and shall not be void for want of form.

Am't to be endorsed by cl'k.

NOTE.—The 89th section of the above act is repealed. See "an act to amend an act entitled an act relative to crime and punishment;" approved February 7, 1835, printed in this volume.

Sureties may
surrender prin-
cipal.

Terms of sur-
render.

Jurors shall an-
swer on oath.

This act to be gi-
ven in charge to
grand juries.

Neglect of cl'k
to keep his rec'd
in cl'ks office.

Injur'd party
competent wit-
ness.

Evidence as to
bank notes.

Stolen property
to be restor'd

Firing woods or
prairies.

SEC. 92. That securities for the appearance of any person or persons, to answer to any offence, or to any attachment, may at any time before final judgment be rendered, upon scire facias issued upon the forfeiture of their recognizances, surrender their principals, either in open court or to the sheriff at any time, who shall be bound to receive such person or persons into custody upon the delivery to him, of a certified copy of the recognizance in which such securities may be bound, and to acknowledge such surrender in writing; and such surrender shall, upon the payment of all costs accruing upon the forfeiture and scire facias, acquit such sureties of the amount of forfeiture incurred.

SEC. 93. That on the trial of any person accused of any offence against the laws of this state, it shall be lawful for a defendant or the court, to require jurors to answer on oath, whether they have formed or expressed an opinion, relative to the guilt or innocence of such accused person, and from the answer to such question and to such others as may be asked by the permission of the court, the competency of such jurors shall be determined upon by the court.

SEC. 94. That it shall be duty of the circuit courts, to give specially in charge to grand juries this act, and so much as may be necessary for such grand juries to refer to, of the laws on the subject of the duties of public officers, revenue, county seminaries, estrays, licensed taverns and groceries, vending merchandize, elections, ferries, fees of public officers and all other laws necessary to be referred to, for a proper understanding of each and all of the provisions of this act.

SEC. 95. Any clerk of the circuit court, who shall refuse or neglect to keep his records and books, or any or either of them, whether appertaining to the circuit court, probate court, or board doing county business, in any building previously erected by such board for a clerk's office, or shall neglect or refuse to occupy the same as his office, shall for each day he may so neglect or refuse, be fined in the sum of ten dollars, to be recovered by presentment or indictment, in the proper county.

SEC. 96. That any person against whom an offence may be committed, shall be a competent witness on the trial of an indictment against the person or persons so offending; and persons of skill may be called upon to testify in prosecutions under this act, or in civil cases, whether any note or notes, bill or bills, are genuine or otherwise, leaving the credibility of such persons to the jury, but three persons at least, shall be required to testify to the same point in such cases; *Provided*, that the single evidence of the cashier of the bank on which any note or bill may purport to be, may be received as competent. All stolen property shall be returned to the owner, or the value thereof may be recovered in any court of competent jurisdiction, by an action of trover and conversion, or other proper action.

SEC. 97. That if any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods or prairie, or

other grounds within this state, other than his own, or shall intentionally permit the fire to pass from his own prairie or grounds, to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every such offence, be fined in a sum not exceeding fifty dollars, and stand committed until fine and costs are paid, and shall be liable to the action of the party injured, for damages which he, she or they may have sustained in consequence of such fire.

SEC. 98. If a person declares his intention to part combatants, and when lawfully and in good faith, is engaged in endeavoring to part combatants, or to prevent a fight, if any other person shall wilfully and maliciously commit an assault and battery, on any person so attempting to make peace, and having declared such intention, such person so offending, shall be fined in any sum not less than five dollars, nor more than is provided by this act for a common assault and battery.

SEC. 99. That if any person or persons, shall knowingly bring within this state, a pauper or paupers, with the intention of making them a charge upon any of the counties in this state, he shall upon conviction, on presentment or indictment, be fined in any sum not exceeding five hundred dollars, and stand chargeable with the support of such pauper or paupers.

AN ACT to prevent the sale of Ardent Spirits to the Indians.

[APPROVED FEBRUARY 3, 1832.]

Be it enacted by the General Assembly of the State of Indiana, That no person or persons, of any description whatever, whether associated in company, or individually, shall sell, give, barter, or exchange, or dispose of in any way either directly or indirectly, any spiritous or intoxicating liquors, to any Indian or Indians within this state; and should any person or persons, be guilty of a violation of the provisions of this act, he she or they so offending, shall, upon conviction thereof, by presentment or indictment, in the proper circuit court, for each offence, be fined in any sum not less than five dollars, and not exceeding fifty dollars, and be liable to be imprisoned at the discretion of the jury who may try the case, any term of time not exceeding ten days.

AN ACT concerning Lotteries.

[APPROVED FEBRUARY 3, 1832.]

Be it enacted by the General Assembly of the State of Indiana, That hereafter if any person or persons shall sell any lottery tickets, or share in any lottery, or scheme for a division of property, to be determined by chance, or shall make or draw any lottery, or scheme for a division of property as aforesaid, not authorized by law, on conviction thereof, upon presentment or indictment, shall be fined in any sum not exceeding

five hundred dollars for each offence, at the discretion of the jury; *Provided*, that nothing in this act shall be so construed, as to affect any persons selling any lottery tickets, or drawing any lottery, which shall have been made, and shall not be drawn at the taking effect of this act.

AN ACT to amend "an act relative to Crime and Punishment," approved February 10, 1831.

[APPROVED FEBRUARY 7, 1835.]

Administering
poison.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every person who shall administer or cause and procure to be administered, any poison to any other human being with the intent to kill the person or persons to whom the same shall be administered whereby death shall not ensue, upon conviction thereof shall be punished by imprisonment at hard labor in the state prison, any term of time not less than three years.

Mingling poison
with food, &c.

SEC. 2. That every person who shall mingle poison with any food, drink, or medicine with intent to kill or injure any human being, or who shall poison any spring, well, or reservoir of water with the intent aforesaid, shall upon conviction, be punished by imprisonment at hard labor in the state prison, any term of time not less than two nor more than fourteen years.

Medicine admin-
ist'rd to a preg-
nant woman to
produce miscar-
riage.

SEC. 3. That every person who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction, be punished by imprisonment in the county jail any term of time not exceeding twelve months, and be fined any sum not exceeding five hundred dollars.

Escape from
state prison.

SEC. 4. That every convict confined in the state prison, who shall escape therefrom, shall upon conviction, be punished by imprisonment at hard labor in the state prison for any term of time not exceeding double the length of time for which such escaping convict was originally sentenced, to commence from and after the expiration of the original term of his imprisonment.

Further provi-
sion in relation
to.

SEC. 5. If any prisoner confined in the state prison shall escape therefrom, he may be pursued, re-taken, and imprisoned again notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he shall be re-taken, and shall remain so imprisoned until tried for such escape, or until he be discharged on a failure to prosecute therefor.

Repeal.

SEC. 6. That the eighty-ninth section of the act to which this is an amendment, be, and the same is hereby repealed.

SEC. 7. That every person who by any means whatever shall aid or assist any prisoner lawfully committed to or detained in any jail or other place of confinement for any criminal offence in an attempt to escape therefrom, or who shall convey into such jail or place of confinement any disguise, instrument, arms or other thing proper or useful to facilitate the escape of any prisoner so committed, with intent to facilitate the escape of any prisoner, whether such escape be attempted or not shall upon conviction be punished by imprisonment in the county jail any term of time not exceeding twelve months or be fined any sum not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding a prisn'r
to escape from
jail, &c.

SEC. 8. That if any person shall wilfully and mischievously remove any monument of stone, wood, or other durable materials erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or shall wilfully and maliciously deface or alter the marks upon any tree, post, or other monument made for the purpose of designating any point, course or line in the boundary of any lot or tract of land, or shall wilfully cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, he, she, or they so offending, upon conviction shall be punished by imprisonment in the county jail any time not exceeding six months, or by fine not exceeding two hundred dollars.

Removing, defa-
cing, or altering
land marks.

SEC. 9. That every person who shall be a party to the sale and delivery of any goods or chattels, or to any bond, bill of sale, assignment, grant, gift, deed, or other conveyance of any estate or interest in land, or any rents or of profits issuing therefrom, or of any goods, chattels, choses, or things in action made or executed with a view to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors, and every person being privy to or knowing of such sale, conveyance, or assignment who shall willingly put the same in use having been made in good faith, shall upon conviction be imprisoned in the county jail any term of time not exceeding twelve months, and be fined any sum not exceeding two hundred dollars, and all such sales, deeds, conveyances, and assignments shall be absolutely null and void: *Provided*, that the admission or discovery of such fraud under oath in a civil suit shall in no case be admitted as evidence in any prosecution under this act.

Fraudulent sales
&c.

SEC. 10. The fortieth section of the act to which this is an amendment is hereby repealed, provided that such repeal shall in no wise effect, impair or invalidate any right accrued, prosecution commenced, or crime committed under or by virtue of said section, but that such right or interest shall remain as valid, such prosecution shall lawfully proceed, and every crime shall be prosecuted and punished as if such section had remained in full force.

Repeal.

SEC. 11. That so much of the act to which this is an amendment as relates to, and regulates the proceedings in prosecutions for offences and crimes therein defined shall extend to, and govern prosecutions under this act.

Former act go-
vern prosecu-
tions, &c. under
this act.

five hundred dollars for each offence, at the discretion of the jury; *Provided*, that nothing in this act shall be so construed, as to affect any persons selling any lottery tickets, or drawing any lottery, which shall have been made, and shall not be drawn at the taking effect of this act.

AN ACT to amend "an act relative to Crime and Punishment;" approved February 10, 1831.

[APPROVED FEBRUARY 7, 1835.]

Administering
poison.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every person who shall administer or cause and procure to be administered, any poison to any other human being with the intent to kill the person or persons to whom the same shall be administered whereby death shall not ensue, upon conviction thereof shall be punished by imprisonment at hard labor in the state prison, any term of time not less than three years.

Mingling poison
with food, &c.

SEC. 2. That every person who shall mingle poison with any food, drink, or medicine with intent to kill or injure any human being, or who shall poison any spring, well, or reservoir of water with the intent aforesaid, shall upon conviction, be punished by imprisonment at hard labor in the state prison, any term of time not less than two nor more than fourteen years.

Medicine admin-
ist'rd to a preg-
nant woman to
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riage.

SEC. 3. That every person who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction, be punished by imprisonment in the county jail any term of time not exceeding twelve months, and be fined any sum not exceeding five hundred dollars.

Escape from
state prison.

SEC. 4. That every convict confined in the state prison, who shall escape therefrom, shall upon conviction, be punished by imprisonment at hard labor in the state prison for any term of time not exceeding double the length of time for which such escaping convict was originally sentenced, to commence from and after the expiration of the original term of his imprisonment.

Further provi-
sion in relation
to.

SEC. 5. If any prisoner confined in the state prison shall escape therefrom, he may be pursued, re-taken, and imprisoned again notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he shall be re-taken, and shall remain so imprisoned until tried for such escape, or until he be discharged on a failure to prosecute therefor.

Repeal.

SEC. 6. That the eighty-ninth section of the act to which this is an amendment, be, and the same is hereby repealed.

SEC. 7. That every person who by any means whatever shall aid or assist any prisoner lawfully committed to or detained in any jail or other place of confinement for any criminal offence in an attempt to escape therefrom, or who shall convey into such jail or place of confinement any disguise, instrument, arms or other thing proper or useful to facilitate the escape of any prisoner so committed, with intent to facilitate the escape of any prisoner, whether such escape be attempted or not shall upon conviction be punished by imprisonment in the county jail any term of time not exceeding twelve months or be fined any sum not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding a prisoner
to escape from
jail, &c.

SEC. 8. That if any person shall wilfully and mischievously remove any monument of stone, wood, or other durable materials erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or shall wilfully and maliciously deface or alter the marks upon any tree, post, or other monument made for the purpose of designating any point, course or line in the boundary of any lot or tract of land, or shall wilfully cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, he, she, or they so offending, upon conviction shall be punished by imprisonment in the county jail any time not exceeding six months, or by fine not exceeding two hundred dollars.

Removing, defacing, or altering
land marks.

SEC. 9. That every person who shall be a party to the sale and delivery of any goods or chattels, or to any bond, bill of sale, assignment, grant, gift, deed, or other conveyance of any estate or interest in land, or any rents or of profits issuing therefrom, or of any goods, chattels, choses, or things in action made or executed with a view to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors, and every person being privy to or knowing of such sale, conveyance, or assignment who shall willingly put the same in use having been made in good faith, shall upon conviction be imprisoned in the county jail any term of time not exceeding twelve months, and be fined any sum not exceeding two hundred dollars, and all such sales, deeds, conveyances, and assignments shall be absolutely null and void: *Provided*, that the admission or discovery of such fraud under oath in a civil suit shall in no case be admitted as evidence in any prosecution under this act.

Fraudulent sales
&c.

SEC. 10. The fortieth section of the act to which this is an amendment is hereby repealed, provided that such repeal shall in no wise effect, impair or invalidate any right accrued, prosecution commenced, or crime committed under or by virtue of said section, but that such right or interest shall remain as valid, such prosecution shall lawfully proceed, and every crime shall be prosecuted and punished as if such section had remained in full force.

Repeal.

SEC. 11. That so much of the act to which this is an amendment as relates to, and regulates the proceedings in prosecutions for offences and crimes therein defined shall extend to, and govern prosecutions under this act.

Former act governs prosecutions, &c. under this act.

AN ACT to amend "an act relative to Crime and Punishment," approved February 10, 1831.

[APPROVED FEBRUARY 8, 1836.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That where any person shall have judgment of death rendered against him or her, pursuant to the laws of this state, by a tribunal of competent jurisdiction, and in which the circumstances are sufficient to warrant the interposition of executive clemency, but not sufficient to render a complete pardon, expedient or proper in the opinion of the governor, he is hereby authorized and empowered to commute the said punishment of death, into imprisonment at hard labor or solitary confinement in the state's prison for life, or any term of years not less than ten.

SEC. 2. That in all cases where any person shall be deemed guilty of a riot, and shall be convicted thereof, it shall and may be lawful, and it is hereby left discretionary with the court or jury trying the case, to assess the fine, either with or without imprisonment, as circumstances may require.

SEC. 3. That so much of the thirteenth and seventeenth sections of the act to which this is an amendment, as contravenes or is contradictory to the provisions of this act, be and the same is hereby repealed.

AN ACT to amend the ninth section of an act entitled "an act relative to Crimes and Punishments," approved February 10th, 1831.

[APPROVED JANUARY 26, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person who shall, with an intent to defraud any person or persons, body corporate or politic, give, barter, sell or put away any false, forged, or counterfeit gold or silver coin, which now is or may hereafter become current, or put in circulation in this state; or any bank note, bill or bills, or any draft on any chartered bank of this state, or any of the United States, or the territories thereof, knowing the same to be false, forged or counterfeited, shall upon conviction thereof, be imprisoned at hard labor in the state prison, for a period not less than two nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

AN ACT to amend the 34th section of an act relative to Crime and Punishment, approved February 10, 1831.

[APPROVED FEBRUARY 4, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every person who shall cut down or remove any timber trees of any kind, or who shall remove any stone

or other valuable article from any of the public lands belonging to the United States, for the purpose of selling or making merchandize of said timber or stone, or for the purpose of transporting the same to the state of Illinois or any other state, shall be deemed guilty of malicious trespass, and upon conviction thereof, shall be fined in five times the value of such timber so cut or removed, or stone and other valuable article so removed for the purposes aforesaid: *Provided*, that nothing in this act shall be so construed as to make actual settlers upon public lands guilty of trespass, who may cut timber and use stone for their own private farming purposes upon the land upon which they may reside.

CHAPTER XXVII.

AN ACT for the relief of Insolvent Debtors.

[APPROVED FEBRUARY 9, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person who is, or may become insolvent and unable to pay his just debts, whether civil process shall have issued against him or not, may obtain relief by filing his petition in writing, in the circuit court of the county where he resides, setting forth the circumstances of his indebtedness, together with such other matters as may be necessarily connected therewith, and praying for relief accordingly; which petition shall be accompanied with a schedule, containing an accurate statement of all debts by said petitioner owing, and of all debts and demands to him due or accruing, together with all property of every kind and description, real as well as personal, by him owned, possessed or claimed, in any way or manner, (except such articles of personal property as may be exempt by law from execution,) and where any real estate shall be inserted in said schedule, the same shall be particularly described and designated by the proper number, metes, bounds, quantity, quality, situation and title, and all and singular his goods, chattels, moneys, credits, rights and effects, by a good, sufficient and exact description thereof; and said petitioner shall also at the same time, deliver into court, all moneys, bills, notes, bonds, accounts, transcripts of judgments and title papers, together with a sufficient and certain direction how to get possession of all other goods, chattels and effects, set forth in said schedule; which petition and schedule shall be verified by the affidavit of the said petitioner, annexed thereto, which may be made and taken before any person legally authorized to administer oaths.

SEC. 2. That it shall be the duty of the circuit court, to whom such application shall be made, at the time of filing such

Insolvent debtor may file petition in cir. court.

Schedule of estate.

Description of real estate.

Debtor shall deliver into court moneys, bills, &c. Schedule to be sworn to.

Order of publication.

Publication of
notice.

Affidavit of pub-
lication.

Trustee to be
appointed.

Trustee's bond.

Form of insol-
vent oath.

petition and schedule as aforesaid, to cause an order to be entered up, directing publication of the pendency of such application, which shall briefly and succinctly set forth the object of said petition, and that the said insolvent petitioner will, at the next ensuing term of said court, make application to have the benefit of this act extended to him, and for a final discharge under the provisions thereof; a copy of which order, properly attested by the clerk of said court, said insolvent petitioner shall cause to be published in some newspaper printed in the county, of which said insolvent petitioner is a resident, or if none such be therein published, then in some such paper published most convenient thereto, for three weeks successively, at least sixty days previous to the next ensuing term of said court, a copy of which printed order of publication and notice, with the affidavit of the editor or publisher of such newspaper appended thereto, that the same has been duly published in his paper as above directed, shall be deemed sufficient evidence of such publication: *Provided*, that at the time of said application, such petitioner shall be allowed to except from his said inventory, and retain the amount of the necessary expense of such publication; and if the petitioner be in custody at the instance of a creditor, he shall thereupon be discharged therefrom.

SEC. 3. That at the term of such court, succeeding the term at which such order of publication shall be made, upon the production of the requisite proof, by such insolvent petitioner, of the due publication of such order as herein before provided for, it shall be the duty of the court to appoint a suitable person as trustee, for the purpose of accepting a conveyance or assignment from such insolvent petitioner, of all the property, both real and personal, and of all rights, credits, moneys, and effects, belonging to said insolvent petitioner, as set forth and described in his petition and schedule, who previous to his proceeding to act under the authority of his appointment, shall give bond to the state of Indiana, with sufficient sureties, to the acceptance of said circuit court, in double the amount of the value of the property to him transferred or assigned by such insolvent petitioner, conditioned for the faithful discharge of the duties of his said trust; and it shall also be the further duty of the said court, at the same time, to require the said insolvent petitioner, to take the following oath or affirmation, which shall be administered to him by the clerk of said court, in open court, as follows: "I, A B, do hereby, in the presence of Almighty God, solemnly swear (or affirm as the case may be) that the schedule by me here subscribed and delivered, contains to the best of my knowledge, remembrance and belief, a full, perfect, just and true account, statement and discovery of all the property, both real and personal, to me belonging, or to which I am in any way entitled, (except so much as is exempt by law from execution) together with all the information within my power for obtaining the same, and all debts or demands of all and every description, whether due or to become due to me, or to any person or persons in trust for me, by bond, note,

bill, book account, or otherwise, and of all books and evidences of debt, and title papers, whereby any money or property now is or may hereafter become due or payable, or any benefit accrue to me, or to my use, or to any person or persons in trust for me, and also a true list of the names of all my creditors, with the sums respectively due from me to them, so far as I can ascertain the same, and that I, or any person or persons in trust for me, have no property, either real or personal, stock, books, bonds, bills, notes, accounts, title papers or evidences of debt, claim or demand, except those contained in this schedule; that I have not directly or indirectly, sold, lessened, or otherwise disposed of in trust, or concealed, all or any part of my property, either real or personal, money, debt, stock, securities or estate, whereby to secure the same for my own benefit or advantage, and thereby to defraud or deceive any of my just creditors;" which oath or affirmation, being subscribed by such insolvent petitioner in open court, and duly attested by the clerk of said court, shall be filed by him along with such petition and schedule, and shall remain on file among the papers and records of such court, for the information of the creditors of such insolvent petitioner; and such schedule and delivery, together with the said insolvent oath, shall well and truly and to all intents and purposes whatever, vest in the trustee aforesaid, and to his successor or assigns forever, the right, title, interest, claim and demand, both in law and equity, of the person making such schedule, delivery and oath, to all the property, rights and credits mentioned and set forth in said schedule, in fee simple, clear of incumbrance, without any further conveyance, transfer, assignment or delivery whatever.

Sec. 4. That the trustee to be appointed in pursuance of the foregoing section, shall be fully empowered to determine and adjust all controversies which may arise in the settlement of such insolvent petitioner's affairs, either by suit or suits at law, or in equity, or by arbitration or compromise, as such trustee may deem most advisable; and such insolvent petitioner shall in all cases, be entitled to a set off of all demands against any and every creditor having claim against him, and such trustee may institute any suit or suits, for the recovery of any and all debts, dues, and demands, which may be transferred or assigned to him as aforesaid, in trust for the use of such insolvent petitioner's creditors; and no suit instituted by such insolvent petitioner, and which shall be pending at the time of the assignment, shall abate thereby, but shall be continued and progress in his name; but if recovery shall be had, the avails thereof shall be assets in the hands of the said trustee, for the payment of the debts of the said insolvent petitioner.

Sec. 5. That the trustee aforesaid, after having collected all the debts, dues and demands, to him assigned, in trust as aforesaid, and after having converted all other property to him assigned in trust as aforesaid, into money, shall proceed, without delay, to make an equal dividend of the same, agreeably to the provisions hereinafter specified, among the creditors who shall have exhibited their claims, in proportion to the amount of their just demands respectively: *Provided*, that the said trustee may

Oath to be at-
tested and filed.

Effect of sche-
dule and oath.

Powers and du-
ties of trustee.

Trustee may
bring suit.

Avails of suits
pending to be
assets.

Dividend, how
made.

Proviso.

retain for his services and expenses, such compensation as the proper court shall adjudge reasonable.

Trust. to give notice of time adj. justifying claims.

Sec. 6. That the trustee immediately after executing his bond as aforesaid, shall give notice, by publication in some newspaper printed in the county wherein such proceeding may be pending, if any such be printed therein, if not then by advertising the same in some newspaper nearest thereto and by written advertisements posted up in three of the most public places in said county, one of which shall be the clerk's office of said county, of the time and place he will attend for the purpose of receiving and deciding upon all claims against said insolvent petitioner, at which time and place the dividend aforesaid shall be made: *Provided always*, that four months notice at least, shall be given of the time and place of such meeting, by the said trustee; and if any creditor shall fail to exhibit his claim at, or within the time specified in said notice, he shall be entitled to no share in the distribution, and the said trustee shall make distribution of so much of such property, as he may have been able to convert into money, every six months, and so on from time to time, until the whole of such estate shall be distributed, except what is heretofore excepted; and after said trustee shall have made a complete distribution of said insolvent petitioner's estate, according to the directions herein contained, he shall make out and submit to said circuit court, a true report of his proceedings concerning the same, which shall be subject to the inspection of said court for their approval or disapproval; and any creditor or other person concerned, feeling himself aggrieved by the decision of said trustee therein, may file his exceptions thereto, which shall be submitted to such court for their determination.

Proviso.
Creditor failing to exhibit claim, not entitled to share.
Trust. to distribute every six months, & rep't. final settlement to c. court.

Credit'r may except to trustee's report.

Debtor's bond to assign.

If bond be not given, petition to be dismissed, &c.

Sec. 7. On the filing or exhibiting of any petition for the benefit of the provisions of this act, the insolvent petitioner shall first give bond, payable to the state of Indiana, with security to be approved of by the circuit court, or the clerk thereof, if in vacation, or the justices of the peace as the case may be, conditioned that the said petitioner will well and truly assign, transfer, and convey all his property for the benefit of his creditors, pursuant to his petition and the provisions of this act, and that he will deliver to the trustee to be appointed, all and singular his personal property in his possession or in execution, and upon his failure or refusal to give such bond, or if given to comply with any of its provisions, his petition shall be dismissed with costs; and any person aggrieved may have his remedy on such bond, to the value of any such property not so assigned, transferred, conveyed, or delivered, if his original claim against the petitioner amount to so much, if not, then to the value of such property not so assigned, transferred, conveyed, or delivered; and any other creditor aggrieved may have his remedy by writ of *scire facias* or on the first judgment on such bond, subject to the aforesaid restrictions.

Effect of insolvet's discharge.

Sec. 8. That after any insolvent petitioner shall have assigned and delivered over all his property as aforesaid, in trust

for the use and benefit of his creditors, and shall have been legally discharged agreeably to the provisions of this act, his person shall be forever thereafter privileged from imprisonment for any debt or demand, due or owing by him at the time of filing his petition as aforesaid; but any property he may afterwards acquire, shall always be liable for the payment of such debts.

Sec. 9. That if any insolvent petitioner contemplated by this act, shall have directly or indirectly, sold, lessened, concealed, kept back or otherwise disposed of any of his property, rights or credits whatever, thereby to defraud any of his creditors, such insolvent petitioner, on proof of the same to the court, made at any time within three years, shall derive no advantage from his discharge under this act, but the same shall be deemed void, and he on conviction thereof, shall be deemed guilty of perjury and punished accordingly: *Provided*, that on the petition or application in writing, of any person interested, within the time last aforesaid, setting forth any such fraudulent conduct in this section mentioned, such court shall proceed, ten days written notice thereof having been given to the debtor, to examine into the same, and on the request of either party a jury shall be empanelled to try the matters in said petition or application contained, and if they find any instance of fraud as therein mentioned, the court shall give judgment making null and void such discharge of the debtor's person from execution as aforesaid.

When discharge shall be inoperative

Discharge how set aside for fraud

Sec. 10. That where any insolvent person shall in vacation be arrested and held in custody, upon or by virtue of any civil process, whether original, mesne or final, and shall thereupon be desirous of availing himself of the benefit of this act, it shall be lawful for him so to do, by filing his petition and schedule in the clerk's office of the circuit court, of the county in which he resides, under the same regulations and restrictions, as prescribed in the first section of this act; whereupon it shall be the duty of the clerk of such court immediately to issue a supersedeas to such process, which the sheriff and all other persons concerned are required to obey; and at the next term of said court, they shall cause to be made the order of publication, of the pendency of such application, as required by the second section of this act, and shall in all other respects proceed with such petition and application as if the same had been made to such court in term time.

Insolvent how discharged from arrest.

Sec. 11. That if any sheriff or other officer, shall be prosecuted for the escape of any person liberated under this act, he may under the plea of the general issue, give this act and the special matter in evidence.

Sheriff sued for escape may plead this act.

Sec. 12. That when any person who is imprisoned on any process, whether original, mesne or final, shall be unable to support himself in prison, and having made affidavit to that effect before any person authorized by law to administer oaths, the plaintiff shall in such case stand chargeable for his support, and in case the said plaintiff shall fail or refuse, to furnish the means necessary for the reasonable support of such person in

Prisoner unable to support himself in jail, how discharged.

prison, it shall be the duty of the jailor immediately to set such person at liberty.

Insolv't may be interrogated.
SEC. 13. It shall be lawful for any creditor of such insolvent petitioner, on the final hearing of said petition, by disinterested testimony, to establish fraud on such petitioner, and if such fraud be satisfactorily shewn, the court shall not discharge such petitioner; but if process shall have been issued and superseded, new process may thereupon issue.

Insolv't debtor in jail under justice's execution, how discharged. Petition and proceedings.
SEC. 14. That if any person shall be taken and charged in execution, issued on any judgment obtained before any justice of the peace, it shall be lawful for any two justices of the peace of the county, upon the petition of the prisoner or prisoners, by warrant under their hands and seals, to require the sheriff, jailor or keeper of the jail of the county in whose custody the said prisoner or prisoners may be, to bring the body or bodies of such prisoner or prisoners before them, at the court house on a day certain, together with a list of the several executions with which he or they may stand charged in the said jail; which warrant every such sheriff, jailor or keeper is hereby

Notice to party.
 commanded to obey; and notice shall be given to the party or parties, his, her or their executors, administrators, or agent, at whose suit such prisoner or prisoners shall be in execution, if living within the county; and such prisoner coming before the said justices, shall subscribe and deliver in a schedule of his or her whole estate, and take the following oath: "I, A B do in the presence of Almighty God, solemnly swear, (or affirm as the case may be) that the schedule now delivered and by me subscribed, doth contain to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods, money and effects unto me in anywise belonging, and such debts as are unto me owing, or to any person in trust for me, and of all securities or contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or my use, or any person or persons in trust for me; and that I have not, nor have any person or persons in trust for me, any lands, money, stock or other estate real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold, lessened or otherwise disposed of in trust, or concealed, all or any part of my lands, goods, money, stock, debts, securities or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, to defraud or deceive any creditor or creditors to whom I am indebted in anywise whatever; and that I will without fraud or deceit, deliver up and convey to such person or persons as the justices named in my petition may appoint, in trust and for the use of my creditors, all my estate both real and personal, except so much as is exempt from execution;" which schedule being so subscribed in the presence of the justices aforesaid, shall be lodged by them with the clerk of the circuit court of the county, for the information of the creditors of such person or persons.

Affidavit to be lodged with clerk

SEC. 15. Such person having subscribed and delivered in a Prisoner to be discharged. schedule and taken an oath as aforeaid, shall by order of the said justices, be forthwith discharged, and the said justices shall thereupon appoint a trustee, and proceed to a final determination of the case agreeably to the provisions of this act. Trustee, how appointed.

SEC. 16. That at the time any insolvent petitioner, whether in the circuit court or before the two justices aforesaid, shall take the oaths of insolvency as prescribed by the third and fourteenth sections of this act, such insolvent petitioner shall, in addition to such oath, be required to answer any questions which may be put to him by the court, justices or any creditor, relating to his property or indebtedness; and if on such examination of the petitioner it shall appear to the satisfaction of said court or justices, as the case may be, that he has been guilty of perjury, in his oath or affirmation aforesaid, or of fraud in making out his schedule aforesaid, his petition shall be dismissed with costs, nor shall he have the benefit of his discharge under the provisions of this act. Insolv't shall answer questions on oath at final hearing. If guilty of perjury or fraud, shall not be discharged.

AN ACT to abolish imprisonment for debt in case of females.

[APPROVED FEBRUARY 7, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That hereafter no *capias* in any civil cause against any female, shall be issued by a justice of the peace, nor shall any *capias ad satisfaciendum* be issued from any court or by any person against a female, in any civil cause, nor shall any female be arrested or held to bail in any civil cause: *Provided however,* that this act shall not be construed to exempt any female from being arrested or held to bail on any attachment issued in any suit in equity, or for contempt of court. Capias shall not issue against females in civil cases.

CHAPTER XXVIII.

AN ACT concerning Debtors and their Securities.

[APPROVED FEBRUARY 17, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when any person bound as security, by bond, bill, note or otherwise, for the payment of money, or performance of a contract, shall apprehend that the principal debtor for whom he is bound, is likely to become insolvent, or remove from this state, without previously satisfying or discharging such debt, duty, demand or obligation, so that it will become impossible, or difficult for such security, after paying, satisfying or discharging such debt, duty or obligation, to recover the value thereof, from such principal debtor; it shall be lawful for

such security, if action shall have accrued, on any such contract as aforesaid, to require by notice in writing, his creditor, forthwith to put the bond, bill, note or other contract, by which he is bound as aforesaid, in suit; who shall within reasonable time, commence an action, and proceed with due diligence, to judgment and execution thereon; and if such creditor, shall fail or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract: *Provided*, that such principal shall be held to special bail for his appearance to such action upon the affidavit of such security, setting forth any of the requisites of this section.

Security may
compel principal
to answer
joint declaration

SEC. 2. That whenever any action authorized by the provisions of this act, shall be brought against two or more individuals on any note, bond, bill or other obligation, any one or more of whom shall have executed the same as security for the other, it shall be lawful for the person or persons who may have executed the same as such security to file his declaration in the court in which such suit is pending, setting forth that he executed such note, bill, bond, or other obligation as security for such other person; and upon filing such declaration, the clerk of such court shall issue a summons to such joint obligor, directing him to appear at the next term of said court and answer the matter set forth in said declaration.

Issue and trial.

SEC. 3. That at the term of such court, at which said individual shall be summoned to answer: *Provided*, said summons shall be served upon him ten days before the commencement of said term, if said individual shall deny the matter alleged in said declaration, the said parties shall proceed to make up an issue as in other cases, and thereupon the court shall empanel a jury to try said issue, if the amount in controversy be over twenty dollars, and the jury after hearing all the testimony which may be introduced by either party, shall determine whether such person or persons so filing said declaration executed the said note, bill, bond or other obligation as security for the other obligor or obligors.

C. may order levy to be first made on principal, goods, &c.

SEC. 4. That if the court or jury in such case shall determine that the person or persons filing such declaration, executed such note, bond, bill, or other obligation as surety for the other obligor or obligors in the same, the court shall thereupon make an order, upon the order book of such court, directing the sheriff of the proper county to levy any execution which may be issued upon the judgment rendered upon such note, bill, bond, or other obligation, first upon the property of the principal or principals in said judgment and exhaust the same before he shall levy an execution upon the property of such security or securities, a memorandum of which order shall be endorsed by the clerk of such court, on any execution issued on such judgment, which order it shall be and is hereby made the duty of the sheriff, into whose hand any such execution may be placed, to obey.

Order to be endorsed on execution.

SEC. 5. That the proceedings in the suit upon any such note, bill, bond, or other obligation, shall not be delayed or post-

poned by reason of the proceedings of such security or securities hereby authorized, but the same shall progress without reference to the proceedings instituted by such security or securities, and the proceedings herein authorized and progress either while suit is pending upon such note, bill, bond, or other obligation in favor of the payee or payees of the same or after judgment has been rendered thereon.

Proceedings shall not be postponed.

SEC. 6. That the provisions of this act, shall be extended to the heir, executor, or administrator of any deceased security, against the creditor or his assignee, executor or administrator, upon his compliance with the provisions of this act; but nothing herein contained, shall be construed to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral considerations [conditions.]

Provisions of this act to whom extended.

SEC. 7. That when any security, his heir, executor or administrator, pays or discharges the debt or contract of his principal or part thereof, upon judgment rendered against him, he shall have judgment to recover the value, or amount so paid or discharged, together with interest and costs, upon motion in the court, where such judgment may have been rendered against such security, his heir, executor or administrator of such principal debtor, his heir, executor, or administrator.

Security having paid debt or principal may have judgment on motion.

SEC. 8. That in cases where there are two or more sureties to any bond, bill, note or contract, and one or more of such sureties are subjected by judgment of any court, to the payment of the debt or damages, by default of the principal obligor, and such obligor be insolvent, so that the amount or value thereof, cannot be recovered of him, the court before whom such judgment may be rendered, shall upon motion of such security or securities, grant judgment that they recover against all and every the other co-sureties, their heirs, executors and administrators, for their and each of their respective shares and proportions of the amount or value of such judgment, with damages and costs.

Proceedings where there are two or more sureties, & principal insolvent

SEC. 9. That no surety, his heir, executor or administrator, shall be suffered to confess, or suffer judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety or his legal representative aforesaid, good collateral security, to be approved by the court before whom such suit is depending.

Surety may not confess judgment to prejudice of his principals, &c.

SEC. 10. That when the special bail of any judgment debtor, or shall be damaged by the payment of such judgment, or part thereof, it shall be lawful for such bail, his heir, executor, or administrator, to recover the amount of such payment, with interest and costs, upon motion in the same court, where judgment was rendered against such bail, or his legal representatives, of the said debtor, his heir, executor, or administrator.

Remedy in favor of special bail.

SEC. 11. That in all proceedings by motion under this act, ten days notice of such motion shall be given to the person, against whom such judgment is to operate, by personal ser-

Notice.

vice in writing, if such person is a resident of this state, and if a resident out of the state, by publication in some newspaper, as by law is required in other cases.

AN ACT concerning Public Defaulters.

[APPROVED FEBRUARY 17, 1838.]

Treas'r, Sec'y
and Auditor
shall rep't de-
falcations.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the treasurer of state, secretary of state and auditor of public accounts, shall respectively report to the governor all defalcations and all neglect of duty of such disbursing or collecting officers or agents of this state as are required to file their bonds with either the said treasurer, secretary or auditor, and also all failures to pay or perform any undertaking made by any person with this state by virtue of any contract or bond filed with either the said treasurer, secretary or auditor.

Gov'r shall di-
rect suit to be
brought.

SEC. 2. That upon such report being made to the governor, it shall be his duty forthwith to direct suit to be brought for such default, neglect or failure, and may if the same be in his opinion necessary, cause counsel to be employed in behalf of the state, and all other necessary matters and things to be done for the due prosecution of such suits.

CHAPTER XXIX.

AN ACT regulating Descents, Distribution and Dower.

[APPROVED, FEBRUARY 17, 1838.]

How estate
shall descend.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the real and personal estate of any person dying intestate, shall, if he or she have a child or children living, descend, in equal proportions, to said children, and to the descendants of any of them who may be deceased: the children of a deceased child inheriting the share of their deceased parent. But if all the children dying intestate be deceased, and grand children only survive, then his property shall be equally divided among said grand children. So of great grand children or other more remote direct descendants. Saving, however, in all cases, to the widow, her right of dower. *And provided further*, that posthumous children shall inherit in the same way as if they had been born previously to the death of the father.

Saving right of
dower.

For want of
children, estate
how to descend.

SEC. 2. If there be no children, nor their descendants, then one half shall go to the father and the other half be equally divided among the brothers and sisters or their descendants. If there be no father, then one half shall go to the mother and the other be equally divided among the brothers and sisters or their

descendants. If there be no father or mother, then the whole shall be equally divided among the brothers and sisters or their descendants. If there be no brothers or sisters or their descendants, then the whole shall go to the father, or if he be deceased, to the mother: *Provided however*, That if the widow of said deceased be living, she shall, in all or any of the cases contemplated in this section, be entitled to two thirds of his personal estate and one third of his real estate in fee simple, after the payment of all debts and necessary expenses of administration; or at her option, to the usual dower. *And provided further*, that if the wife of said intestate be deceased and have left children by a previous marriage, these children or their descendants shall be entitled to one third of the estate of said intestate, both real and personal, after paying all debts and expenses, as above. *And provided further*, that half brothers or sisters or their descendants shall, if there be brothers or sisters or their descendants alive, inherit, each to the amount of one half the share of each full brother or sister or their descendants alive, then the half brothers or sisters or their descendants shall inherit in the same way as if they were full brothers or sisters or their descendants.

Widow's porti'n

Children by a
previous mar-
riage shall inhe-
rit.

SEC. 3. When any person shall die intestate without issue, having a title to any real estate derived by descent or otherwise from the father, the mother of such person or any of her children by another marriage shall, if there be living any brother or sister of such deceased person, or their descendants, inherit only one half the portions of said estate respectively assigned to the said mother or her said children, in the preceding section, or in the case of the mother, at her option, the dower which she may have therein.

How estates to
descend derived
from paternal
line.

SEC. 4. When any person shall die intestate without issue having a title to any real estate derived by descent or otherwise from the mother, the father of such person, or any of his children by another marriage, shall, if there be living any brother or sister of such deceased person, or their descendants inherit only one half the portions of such estate respectively assigned to the said father or his said children in section second of this act.

From maternal
line.

SEC. 5. The real and personal estate of persons dying intestate, without issue and without father or mother, or brothers or sisters, or half brothers or half sisters or descendants thereof shall be divided into two equal parts; one of which shall go to the paternal, the other to the maternal kindred in the following order: first to the grand-father, second, to the grand-mother; and if there be neither, then to uncles and aunts and their descendants: *Provided however*, that if said person dying intestate leave a widow, she shall, in all cases, contemplated in this section be entitled to all the personal estate and two-thirds of all the real estate of the said deceased: *And provided further*, that if the wife of said intestate be deceased, and have left children by a previous marriage, the said children shall be entitled to one half of the estate, both real and personal, of said intestate after paying all debts and expenses.

Estates when to
descend to pa-
ternal or mater-
nal heir.

Proviso

When estates shall go to wife.

When to escheat.

Property advanced to heirs taken into view.

Legitimate and illegitimate children on same footing.

Illegitimate children recognized, &c.

Widow's part of personal estate.

Widow shall give bond to refund.

\$100 to widow absolutely.

Estates in tail, how disposed of.

Widow's dower

SEC. 6. When there is no issue of the intestate, nor father or mother, brothers or sisters, nor their descendants, grandfathers or grand mothers, uncles or aunts, uncles or aunts in the paternal line or their descendants, great grand parents and great uncles and aunts and their descendants, then that part of the estate of the said intestate both real and personal that is above allotted to said line shall descend to his widow, if he leave one; if not, then to the children of his deceased wife by a previous marriage or other descendants, and so also of the maternal line. If there be none, then his estate or the proceeds thereof, shall escheat, upon office found, to the state, and shall be paid into the treasury, to be applied exclusively to the support of free schools in the several townships of the proper county, in such manner as a future legislature may direct.

SEC. 7. In making dividends of the estate of any person dying intestate, among his or her heirs, any property that any of them shall have previously received by way of advancement, shall be taken into view, if such person shall apply or claim his or her right of inheritance or distribution.

SEC. 8. There shall be no difference between legitimate and illegitimate children, in the inheriting of property that descends to them through the mother.

SEC. 9. If any man shall marry a woman, who has previous to her marriage borne an illegitimate child or children, and shall acknowledge himself to be the father of such child or children, such child or children shall be deemed legitimate.

SEC. 10. In the distribution of the personal estate of any intestate, the widow shall in all cases not otherwise provided for in this statute, be entitled to one third part thereof, after the payment of all just debts: *Provided*, that the widow of any intestate may select, at the valuation as contained in the inventory, to the value of one third of the goods and chattels of such decedent, on giving bond with sufficient security to account therefor to the creditors, heirs, or legatees, if for the payment of debts, or to equalize the residue of the estate after payment of debts in its distribution, such accounting shall be necessary. And the widow of any decedent, over and above the privileges aforesaid may select, at the time of valuation, one hundred dollars in value of the personal estate of her deceased husband, for which she shall not be required to account in any manner whatever.

SEC. 11. Any person or persons who may hereafter be seized of any estate tail, by devise or grant, shall be deemed to be seized of the same in fee simple, after the second generation; *Provided*, that any person may, by his last will and testament, devise his real property to trustees for the benefit of his grand children, in esse or not in esse.

SEC. 12. The widow of any decedent, shall in all cases not otherwise provided for in this act, be endowed of one full and equal third part of the lands, tenements and hereditaments, the legal title to which vested in her husband or any other person to his use, at any time during the coverture, unless the same be legally barred by the wife; and also of lands,

tenements and hereditaments to which or any part thereof the said husband was equitably entitled at the time of his death, unless barred or released as above. And the said husband shall be considered equitably entitled to any real property for which he has made a contract, in proportion to the purchase money actually paid in his life time. And the dower of said widow shall not be considered as sold or extinguished by a sale of her husband's property by virtue of any decree, execution or mortgage, to which she may not be a party.

SEC. 13. In all cases of feme coverts dying intestate, the real property shall go to the husband in fee in the same portions and under the same circumstances that it would have gone to his widow had he been the decedent and she survived him. He shall also be tenant by the curtesy as at common law in the residue.

SEC. 14. That until such dower shall be assigned, it shall be lawful for her to remain and continue in the mansion house and the messuage thereunto belonging, without being chargeable to pay the heir any rent for the same.

SEC. 15. That if the heir or other person, having the next immediate estate of freehold or inheritance, shall not within one month next after demand made, assign and set over to the widow of the deceased, her dower as aforesaid to her satisfaction and according to the true intentment of law, or if such heir or other person shall not reside within the county where the major part of the real estate of said decedent lies, or if any of the heirs are minors, it shall be lawful for such widow to advertise for three weeks successively in some public newspaper printed in said county, and if none be printed therein, then in the county nearest thereto in which a paper shall be published, at least twenty days previous to the first day of the next term of the circuit or probate court to be holden for said county, that application will be made to said court to appoint commissioners to assign and set over to such widow her dower as aforesaid; under proof of which notice it shall be the duty of said court to appoint three persons as commissioners, resident in the county, disinterested and not allied to the parties, to assign and set over to such widow, her just third part of, and in all the lands, tenements, and hereditaments, either legally or equitably belonging to her deceased husband.

SEC. 16. The said commissioners shall, at some convenient time, after such appointment, proceed to assign and set off the said dower, having first taken an oath or affirmation before some person duly authorized to administer oaths, faithfully and impartially, to discharge their duties, and after the same shall be so assigned and set off by the said commissioners or a majority of them, they shall make a return thereof under their hands and seals, to the said circuit court; which upon being acknowledged by them or a majority of them, in open court, shall be recorded by the clerk of said court, and shall operate as a complete and effectual assignment of dower.

Feme covert die intestate, estate how disposed of

Continue in mansion h. until dower is assigned

Heir neglecting to assign dower, court may appoint com'rs for that purpose.

Court to assign dower.

Widow failing to apply for assignment of dower.

SEC. 17. In case the widow of such decedent shall fail or neglect to apply for the assignment of her dower, it shall and may be lawful for the heirs of such decedent, or any of them, to have the same set off and assigned, agreeably to the provisions of the preceding section.

Dower may be assign'd in special manner.

SEC. 18. When estates of which a woman is dowable, are entire, and when no division can be made by metes and bounds, dower thereof shall be assigned in a special manner, as if a third part of the rents, issues, and profits, to be computed and ascertained by the commissioners aforesaid; and when there are several tracts of land, if the widow shall select any particular tract or parcel of such estate, lying together, in lieu of the dower she may be entitled to in all, the commissioners aforesaid may, if they think proper so to do, set off such tract or parcel to such widow, in full satisfaction of her dower.

Widow entitled to damages.

SEC. 19. In cases of demand and refusal to assign dower, where there is no minor heir, the widow shall be entitled to reasonable damages from the heir or other person as aforesaid, from the time of such demand, to the time of the assignment of her dower.

Waste.

SEC. 20. No person endowed as aforesaid, shall wilfully commit waste, or suffer the same to be done on penalty of forfeiting that part of the estate, whereon such waste shall be made, or suffered to him, her or them, that have the immediate estate of freehold or inheritance in remainder or reversion; and in case of negligent waste, done or suffered, she shall forfeit such damages as a jury shall assess.

Tenants in dower.

SEC. 21. All tenants in dower, shall maintain the houses and tenements, with the fences and appurtenances, whereof they may be endowed, in as good repair as the same may have been delivered to them, during the term, except natural decay.

Wife may be barred.

SEC. 22. If a wife leave her husband, and live with her adulterer, she shall be barred forever from her dower; but if her husband become reconciled to her, and suffer her to dwell with him, she shall be restored to her right of dower: and if a husband leave his wife and live with an adulteress, he shall be barred forever from his right of tenancy by courtesy, but if his wife become reconciled to him, and voluntarily live with him, then he shall be restored to his right aforesaid.

Husband of his tenancy.

SEC. 23. The said commissioners shall be entitled to one dollar and fifty cents per day for their services; and the clerk of the circuit court, the same fees that are allowed by law for similar services; to be paid by the person or persons applying for the assignment of said dower, unless the court in its discretion should otherwise direct.

Allowance to com'rs.

CHAPTER XXX.

AN ACT to authorize the action of Disseisin.

[APPROVED JANUARY 26, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That in all cases where a person holds possession of lands, tenements, or hereditaments, to the exclusion of the rightful owner, whether such possession be acquired, either by unlawful entry thereon, or by unlawful detainer after lawful entry, the owner of such lands, tenements, and hereditaments shall have his action of disseisin against the wrongful possessor, and shall, in such action, recover the possession thereof, together with damages for the unlawful detention of such possession.

When this act'n will lie.

SEC. 2. That it shall be sufficient for the plaintiff, in such action, to state, in his declaration, the nature of the estate he claims, whether in fee simple, or any lesser estate, and to describe the lands, tenements or hereditaments, with precision and certainty, so as to be distinguished from other lands, tenements or hereditaments, that he was seized or possessed of the premises on a day certain, and that afterwards, on the same day, the defendant entered thereon, disseised the plaintiff thereof, and put him out therefrom, and that he has ever since continued to deforce the plaintiff thereof and hold him out therefrom, and that the defendant has taken the profits thereof to himself, and thereupon demand seizin or possession of the land and damages for its detention.

Pl'f how to declare.

SEC. 3. That it shall be sufficient for the defendant to allege, that he is not guilty, as charged in the plaintiff's declaration, and upon issue joined to such plea, it shall be sufficient for the plaintiff to shew, that the defendant is in possession of the premises, and he has a right to the possession thereof by the law of the land.

Def't plead general issue.

SEC. 4. That the remedy hereby provided, shall embrace all the various remedies known to the common law, for enforcing the delivery of possession or seizin of lands, tenements, and hereditaments, to the rightful owner of any title thereto, either possessory or otherwise, and may be used in lieu thereof: and final judgment in an action of disseisin shall be conclusive upon the parties thereto, and shall be a bar to another suit for the same cause upon titles held by them at the time of such judgment.

Extent of remedy herein provided.

SEC. 5. That landlord and tenants, or persons standing in the relation of landlord and tenant to each other, may join in prosecuting and defending actions of disseisin; and any person standing in the relation of landlord to any person, against whom an action of disseisin may be brought, shall be admitted to defend said action, upon shewing to the court, that such relation exists.

Who may join as pl'ffs and defendants.

Process, when issued.

Action, where brought.

Limitation.

Saving.

No non-suit, &c.

SEC. 6. That the process in actions of disseisin, shall be a summons to the defendant, to be issued after filing the declaration, and directed to the sheriff, to be served in like manner, as other summonses are directed by law: and in all cases, the action of disseisin shall be brought in the circuit court of the county, where the premises, in dispute, are situate; but where part of such premises may be situate in one county, and part in another, the circuit court of either county, shall have jurisdiction, at the election of the plaintiff.

SEC. 7. That no action of disseisin shall be sustained by any person, who shall not have had right of entry within twenty years next before the commencement of such action, unless such person shall have been, during such time or part thereof, absent from the United States, infant, feme covert, or insane; and the time of such absence, infancy, coverture, or insanity, shall not be reckoned any part of the limitation aforesaid, provided such limitation commenced during such inability.

SEC. 8. That no nonsuit shall be suffered, in any action of disseisin, by reason that there may [be] too many plaintiffs, if there be one plaintiff entitled to recover therefrom.

CHAPTER XXXI.

AN ACT regulating Divorces.

[APPROVED FEBRUARY 17, 1838.]

Circuit courts may grant divorce.

Causes of divorce.

In favor of wife.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several circuit courts of this state sitting as courts of chancery, be and they are hereby invested with jurisdiction of all applications for divorce with full power to decree divorces in the manner and for the causes hereinafter mentioned, namely: In all cases where the party against whom such application is made, shall have, subsequent to the marriage, committed any crime within the United States or in any territory thereof, the punishment whereof is or would be on conviction, infamous—for impotency or adultery—in favor of the wife where her husband shall have voluntarily left her for the space of two years with the intention of abandonment—where his treatment to her is barbarous and inhuman, and where he shall have been a habitual drunkard for two years immediately preceding such application and has failed for an unreasonable period to make suitable provision for his family. In favor of the husband where his wife shall have voluntarily left his bed and board for the space of two years with the intention of abandonment, and also for any other cause or causes; and in any other case where the court in the exercise of sound dis-

cretion, shall deem it reasonable and proper that a divorce should be granted: *Provided however,* that the associate judges shall in no case in the absence of the presiding judge, grant [or decree] a divorce. Proviso.

SEC. 2. Any person desirous of obtaining a divorce, who shall have resided in this state two years, may (without reference to where the alleged causes of divorce occurred) file in the office of the clerk of the circuit court of the county in which he or she shall then reside, a bill setting forth the cause or causes of his or her complaint; whereupon such clerk shall issue a summons notifying the defendant to appear at the succeeding term of the court to answer such bill, which summons with an attested copy of the bill shall be served on the defendant at least fourteen days before the first day of the term to which the said summons is made returnable if the defendant be within the jurisdiction of said court, which service and return shall be made as in other case. But if it shall appear by such return that service was made, but not fourteen days prior to the first day of said term, the cause shall stand continued until the next succeeding term of the court, unless the parties shall consent to enter into trial at the term to which such process is made returnable. And when it shall appear to the satisfaction of the court by the return of the officer or otherwise, that the defendant is not a resident of this state, the court shall order notice of the pendency of such suit, and that the defendant appear on the first day of the next term, and answer said bill of complaint, or the matters and things [therein] will be heard and determined in his or her absence, to be published three weeks successively in some newspaper in this state at least six- Libel may be filed.
Summons, how served.
Notice to non-resident def't.

SEC. 3. The practice and proceedings in every such suit shall be the same as in other cases in chancery, except as herein changed; *Provided however,* that the defendant in any such case may as to so much of the complainant's bill as contains the alleged cause or causes of divorce, by general denial without oath or affirmation controvert the same, and may also, in his or her answer, allege in the nature of a cross bill, any cause or causes of divorce against such complainant, but on the setting down such cause for trial, the absence of either party, or the failure of either party to answer such bill or cross bill, shall in no case dispense with proof of the allegations made by such complainant or defendant. Notice how published.
Appearance and pleadings.
May deny generally without oath.

SEC. 4. In all such cases, witnesses may be examined *viva voce*, and testimony taken and recorded in the same manner as in civil cases at common law, and if on the final hearing of any such cause the court shall decree a divorce, it shall operate as a total and complete release of both parties from such marriage contract. No decree but upon oath.
Divorce, how decreed.

SEC. 5. Pending a suit for divorce, the court may make such temporary orders relative to the person or property of the parties as they shall in their discretion deem necessary and proper, and may compel the husband to disclose on oath what Intermediate orders as to estates &c.

Husband shall answer on oath as to wife's estate
 personal or real estate he has received in right of his wife—how the same has been disposed of, and what proportion of it remained in his hands at the time of filing such bill, with full power to carry such orders and decrees into effect as shall be deemed expedient.

Temporary orders by judges in vacation.
 SEC. 6. The presiding judge alone, or the two associate judges together in vacation, may upon petition or supplemental bill filed supported by oath or affirmation, in cases of non-resident defendants, order publication to be made of the pendency of such suit in the same manner as is provided in the second section of this act, and also, make such other temporary orders therein as the court in term time are in the last preceding section of this act authorised to make.

When divorce is decreed, the court shall make division of the estate.
 Proviso.
 SEC. 7. The court pronouncing a decree of divorce may regulate and order a division of the estate both real and personal between the parties, according to equity and good conscience, always having a due regard to the legal and equitable rights of each party: *Provided however*, that nothing herein contained shall authorize the court to divest either of the parties of their title to any real estate in any such proceedings: *And provided also*, that in all cases in which divorces are granted, for causes other than such as shew that there never was a legal marriage, or on account of adultery on the part of the wife, the wife shall retain all her right of dower, in the same manner as if a divorce had not taken place, unless alimony shall be decreed to her by the court in bar of dower expressly.

Pros. attorneys shall prevent the granting of divorces.
 SEC. 8. The several prosecuting attorneys for the state of Indiana are hereby directed, and it is made a part of their duties, to attend to and oppose the granting of all divorces in the circuit courts of their several judicial circuits.

Shall consider the age and sex of children.
 SEC. 9. The court in making a decree of divorce, shall take into consideration the age and sex of the children of any, and shall make orders, and from time to time may alter or amend the same, respecting the custody, sustenance and guardianship of the said children.

CHAPTER XXXII.

AN ACT to regulate General Elections.

[APPROVED FEBRUARY 17, 1838.]

Co. boards shall cause forms to be provided in inspectors.
 SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the board doing county business in each of the several counties, at their first meeting in each and every year, shall cause a suitable number of blank forms of poll books and election returns, to be made out (headed and certified as the nature of the case may be) for each inspector in the several townships, which they shall cause to be delivered into

the hands of the sheriffs respectively, of said counties, whose duty it shall be to deliver them to the proper person, at least ten days previous to the next election.

Judges & c l'ks how appointed.
 SEC. 2. Each inspector shall, previously to the time of opening the election, take to himself two other qualified voters of his township, who together with himself, shall be judges of elections for such township, during the time such inspector shall be appointed to serve; which judges shall appoint two suitable persons as clerks of such elections.

Judges &c. to be sworn.
 SEC. 3. Every inspector and judge of an election shall before such election be opened, be sworn or affirmed that he will faithfully and impartially do the duties assigned him by law, that he will not knowingly permit any person to vote, who is not qualified according to the constitution of this state, nor will he knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, more than is necessary to give satisfactory information of the qualification of such person as a voter; and if no person present is authorized to administer oaths or affirmations, then one of the judges shall swear or affirm the inspector, and the inspector being sworn or affirmed, shall swear or affirm the other judges; the inspector shall also swear or affirm the clerks of election, faithfully and impartially to discharge their duties as clerks of election.

Insp'r failing to attend, electors may app't one.
 SEC. 4. It shall be the duty of the inspector of elections to attend at the place of holding elections in his township, on or before nine o'clock in the morning of the day of election; and should no inspector appear by that time, then the voters of the township present shall appoint an inspector for that occasion, who shall be governed in all things as is herein directed for inspectors duly elected according to law, and any vacancy that may happen, in the appointment of a judge or judges of election, shall be supplied by the inspector, as in the first instance.

Elections, when opened & closed.
 SEC. 5. All elections shall be opened between the hours of nine and eleven o'clock of the day of election, and continue open until four o'clock in the afternoon of said day, after which hour the judges may close the polls at any time when all voters present have voted, or had an opportunity of voting, but shall not be compelled to wait more than fifteen minutes without a vote, until they close the polls, nor shall the polls be kept open after six o'clock.

Penalty for voting in different districts.
 SEC. 6. Each qualified voter may vote once and no more; and if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, or having voted in one township, county or district, shall afterwards go into another on the same day and vote or attempt to vote, every person so offending, shall on conviction thereof, be fined in any sum not exceeding fifty dollars, and shall moreover be rendered incapable of voting or holding any office in this state for the next two years thereafter.

Further duty of office's of elect'n
 SEC. 7. It shall be the duty of the inspector, before he proceeds to receive any vote, to cause it to be proclaimed aloud, that the election is opened; and when any person offers to vote,

the inspector shall call out his name, and if there be no objection to the qualification of such person as a voter of that county, he shall receive his ticket, and in the presence of the other judges, put it into a box to be provided for that purpose, when the name of such person whose ticket is received, shall be again distinctly repeated by one of the other judges in the presence of the clerks, each of whom shall keep a separate list thereof, numbering every name taken down, so that it may be seen at any time whether their lists agree, and if an inspector, judge, or clerk of election, shall attempt to pry into or find out the names of any persons on a ticket that is handed in folded, or expose any such vote, he or they so offending, shall be liable to the same penalty as contained in the nineteenth section of this act.

SEC. 8. Every ticket handed in, shall contain the name of every candidate such voter intends voting for, either in writing or print, designating the office to which he wishes each to be elected, and if more persons are designated to any office, than there are candidates to be elected, such part of the ticket shall not be counted to either of them; but no ticket shall be lost for want of form, if the judges of the election can determine to their satisfaction the person voted for, and the office intended.

SEC. 9. If any person offering to vote shall be challenged as unqualified, by the inspector or judges, or any other legal voter, the inspector of such election is hereby authorized to swear or affirm (as the case may be) the person so challenged, or any by-stander, to answer such questions as may be asked him relating thereto; and the inspector and judges shall decide from the examination as to the legality of such vote: *Provided*, that nothing in the constitution or laws of this state shall be so construed as to authorize any person to vote out of the county of which he is an inhabitant.

SEC. 10. The board doing county business shall provide a sufficient number of ballot boxes, at the expense of the county, for the several inspectors, to be kept by them and delivered over to their successors from time to time.

SEC. 11. Each box shall be provided with a sufficient lock, and shall be locked before the opening of the poll and the key delivered to one of the judges, and shall not be opened during the election, except in the manner and for the purposes hereinafter provided.

SEC. 12. An opening shall be made in the lid of each box, not larger than shall be sufficient for a single closed ballot to be inserted therein, at one time, through which each ballot received shall be inserted.

SEC. 13. When the polls are closed, or at any time after four o'clock of the afternoon, and the judges are at leisure, they may open the box and commence canvassing the votes, when the tickets shall be taken out carefully, one by one, by the inspector, who shall open them and read aloud the names of each person written or printed thereon, and the office for which every such person is voted for, and shall then hand it to one of the judges, who shall repeat the same, and hand it to the other

Tickets to be written or printed.

Voter may be sworn.

Proviso.

Ballot boxes to be furnished.

Lock to boxes.

Opening in lid.

Votes to be counted.

judge, who shall string it on a thread of twine prepared for that purpose; but no judge or clerk of election shall vote after they begin to count the votes, nor shall they publish a statement of the polls until it is proclaimed by order of the inspector, that the election is closed.

SEC. 14. As soon as the poll of an election shall have finally closed, or at any stage of the counting, the inspector and judges may adjourn the counting to a convenient hour of the next day, at which time they shall proceed to complete the counting. May adjourn.

SEC. 15. At the adjournment of the counting, the box shall be opened, and the poll lists and tally papers placed therein; the box shall then again be locked, and the seal of one or more of the judges so placed thereon as to cover entirely, the opening in the lid; the key shall then be delivered to one of the judges and the box to the inspector to be kept by them respectively until the time for resuming the counting. Box how kept during adjournment.

SEC. 16. As the inspector shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate written at the head thereof, and the office he is voted to fill; but if two tickets are found deceitfully folded together, they shall both be rejected. Tickets to be rejected.

SEC. 17. As soon as all the votes shall be read off and counted, the judges of the election shall make out a certificate under their hands, stating the number of votes each candidate received, designating the office for which he was voted to fill; which number shall be written in words at full length; and the certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges of election, who shall on the ensuing Wednesday, deliver the same to the clerk of the circuit court, at the court house or place the courts are held, of such county, (or in his absence to his deputy,) who shall, in the presence of all the judges of election who attend from the different townships, between the hours of twelve and four o'clock, compare the different returns, and the persons having the highest number of votes, for all offices to be elected by the voters of that county only, shall be declared to be duly elected; and the clerk of the circuit court shall forthwith give them certificates of their election accordingly; but if two or more should be equal in votes, the clerks and judges present shall decide by lot which is elected: *Provided*, that nothing in this section contained shall authorize any return to be set aside or rejected by the said clerk for want of form, or on account of its not being strictly in accordance with the foregoing directions, if the same is not thereby rendered ambiguous. Certificate how made & returned.

SEC. 18. The clerks of the circuit courts respectively shall on the day after the returns have been compared, as provided in the foregoing section, make out in a fair hand, in words at full length, two separate certificates of the number of votes each candidate for governor and lieutenant governor received, according to Sec. of State. Clerks shall certify returns for Gov. & Lt. Gov. to Sec. of State.

ding to such return; one of which he shall seal up and transmit to the speaker of the house of representatives, by a senator or representative of his district, whose duty it shall be to deliver the same to the speaker as aforesaid, on or before the second day of the session of the general assembly; and the other he shall seal up and transmit, by mail, to the seat of government, directed to the speaker as aforesaid, and to the care of the secretary of state, by whom the same shall be handed to the speaker, on or before the second day of the session aforesaid.

To Speaker of
H. R.

SEC. 19. The clerks as aforesaid, shall also, in like manner, make out a certificate of the number of votes each candidate for governor, lieutenant governor, and representatives in congress has received in their respective counties, and shall, in presence of some post master of their respective counties, seal up and transmit the same, by mail, to the secretary of state, taking from such post master, if it can be obtained, a certificate, setting forth particularly the time when such statements are deposited in such post office; which certificate shall be carefully preserved by such clerks and remain filed in their respective offices. And it shall be the duty of said secretary of state, as fast as he may receive the returns aforesaid, to give a list thereof to some one of the editors at Indianapolis, that the same may be published for the information of the public.

Sec'y shall
publish returns.

Returns for
R's to Congress.

SEC. 20. It shall be the duty of the secretary of state, on receiving the returns for representatives to congress, to compare said returns and certify to the governor the person or persons having the highest number of votes, duly elected, whose duty it shall be to give such person or persons a certificate of his or their election, attested by the secretary of state.

Election how
decided when 2
or more have
same number of
votes.

SEC. 21. Should two or more persons, in the same congressional district, have all equal and the highest number of votes, it shall be the duty of the governor to issue his proclamation, stating that fact, and that another election will be held, in said district, on a day to be named in said proclamation; and also to cause writs of election to issue to the respective sheriffs in said district.

Cl'k liable for
failure &c.

SEC. 22. Should any clerk of the circuit court refuse or neglect to comply with the requisitions contained in the 18th and 19th sections of this act, he shall on conviction thereof, before the proper circuit court, by presentment or indictment, be fined in any sum not less than twenty nor more than one hundred dollars.

Sec. shall certi-
fy neglect of cl'k
to pros. att'ney.

SEC. 23. It is hereby enjoined on the secretary of state, after the expiration of twenty days from each election for governor, lieutenant governor, or representatives to congress, to certify to the respective prosecuting attorneys any and all omissions of the clerks aforesaid, in their several circuits, to comply with the requisitions of said 18th and 19th sections of this act.

Prosecuti'n shall
be instituted.

SEC. 24. It shall be the duty of the prosecuting attorneys aforesaid, on the receipt of such certificate from the secretary of state to institute prosecutions against such delinquent clerks, and on the trial of the cause, the said certificate of the secretary

of state, under the seal of the state, shall be *prima facie* evidence of such delinquency.

SEC. 25. It shall also be the duty of the respective clerks of the circuit court, within ten days after the returns of each annual election shall have been received in their respective offices, to certify and transmit, by mail, to the secretary of state, the names of such persons, unless in cases of contest, elected to any office in their several counties, as under the constitution and laws, must be commissioned by the executive authority of the state.

Cl'k shall certi-
fy returns to
Sec. of state.

SEC. 26. The list of votes, tally papers, and certificate of judges, which are directed to be forwarded to the clerk at the court house, or place where the courts are held of the county, shall be preserved by said clerk, to be inspected by any person who may wish to examine the same; and the other papers and tickets shall be preserved and kept by the inspector, for the term of six months, for the inspection of any of the voters of the township, who may wish to examine them.

List of tally pa-
pers to be pre-
served.

SEC. 27. When the seat of any representative to congress, or senator or representative in the general assembly of this state, shall become vacant, the governor for the time being, shall issue his writ of election to the proper sheriff or sheriffs, commanding him or them to proclaim, that on a certain day, to be designated in said writ, there will be an election held to fill such vacancy; due notice of which proclamation, each sheriff shall cause to be given to each inspector of elections in the several townships throughout his county; and such election shall be governed in all respects as general elections are.

Vacancy of Rep-
how filled.

SEC. 28. When two or more counties shall be joined together, to compose one senatorial or representative district, the clerks of the circuit court of each county respectively, shall, on the return day of each election for senator, make out a certificate of all votes received by each candidate for senator or representative, and deliver the same to the sheriff; and the sheriff of each county of such senatorial or representative district, shall meet on the Saturday following, at the court house of the oldest county in such district, where they shall compare the several certificates, and jointly give the person having the highest number of votes a certificate of his election; but if any two shall be equal and highest in votes, they shall decide by lot which is elected.

Elections, how
conducted when
two or more co's
form a senatori-
al district.

SEC. 29. If any person shall use any threats, force or violence, or attempt to awe any voter, so as to restrain him in the freedom of choice, or offer any fee or reward, in meat, drink, or otherwise, in order to persuade any elector to vote contrary to his own mind, or shall, on the day of election, give any public treat, or direct any person to do it on his behalf, with a view to obtain any vote or votes for himself or any favorite candidate, every person so offending shall, on conviction thereof, by presentment or indictment, be fined in any sum not exceeding five hundred dollars, and shall moreover be rendered incapable of holding any office of profit or honor, for the next two years thereafter.

Penalty for at-
tempting to re-
strain freedom
of elections.

Penalty on officers neglecting their duty.

Sec. 30. The board doing county business, shall provide a sufficient number of ticket boxes, at the expense of the county, for the several inspectors, to be kept by them and delivered over to their successors, from time to time. If any member of the board doing county business, sheriff, clerk of the circuit court, or inspector, judge, or clerk of elections, shall neglect or refuse to perform the duties enjoined upon him by this act, or having taken upon himself to perform such duties, shall be guilty of fraud and corruption in doing such duties, he or they so offending, neglecting or refusing, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, together with costs of suit, by presentment or indictment.

B'd may make additional allowance to inspectors.

Sec. 31. Each inspector, clerk or judge of election, shall have credit for one day's work on the public roads, for every day he shall be employed in attending an election: *Provided*, that in all cases where there are more than three hundred votes taken at the same poll, the board doing county business in any such county shall make to the inspector, judges and clerks of such election, such additional compensation for their services as they may think reasonable and just, to be paid out of the county treasury: *And provided further*, that where any inspector, judge or clerk shall not be bound, by law, to work roads, said board shall allow them each, one dollar per day for such services, besides the additional compensation provided for by this section.

Compensation to judges &c.

Sec. 32. The board doing county business shall allow the returning judges of election, a reasonable compensation for their services rendered in compliance with the provisions of this act.

Additional poll may be opened.

Sec. 33. The board doing county business in any county in this state, may, if they think the convenience of the people requires it, open an additional place of holding elections at the county seat, or in any township in the county, where the votes usually polled exceed eight hundred.

Election, how contested.

Sec. 34. If any candidate or elector of the proper county, shall choose to contest the validity of any election, or the right of any person proclaimed duly elected in any county, to his seat in the general assembly of this state, such person shall give notice in writing to the person whose election he means to contest, or leave a written notice thereof at the house where such person last resided, within ten days after such election, expressing therein the points on which the same is contested, and shall also give notice to the inspector, judges and clerks of the township or townships, where such grounds for contesting the election of any candidate may have arisen, as in case of the person proclaimed duly elected, and shall within the same time give notice to the sheriff of the county, who shall thereupon summon the members of the board doing county business of the proper county, who shall be severally obliged to attend, under the penalty of fifty dollars each; the sheriff shall appoint a place and time for the said board to meet within the county, which shall be within twenty days after the election; the said

board or any two of them, shall have power to issue subpoenas, and compel the attendance of witnesses to give evidence, under the penalty of fifty dollars, to be levied on each and every delinquent who shall have been duly served with process; and the said board so met, shall hear and certify, under seal, all testimony relative to said contested election, to the speaker of the house of representatives or president of the senate, as the case may be, at their next general assembly.

Sec. 35. No person shall contest any election, unless he is an elector of that county or district in which the elections are held: nor shall any testimony be received, which does not relate to the points specified in the notice: copies attested and sworn to by the person who delivers or leaves said notices, shall be delivered to the board doing county business at the time of their meeting, and previous to their taking any person's testimony: *Provided*, that nothing in this section contained, or in any law of this state, shall be so construed as to authorize an election, for any officer, to be set aside on account of illegal votes having been given at said election; unless it should be made to appear, that a number of illegal votes, have been given to the successful candidate, which, if taken from him, would be sufficient to reduce his vote, below that of any other candidate for the same office, after having deducted from such other candidate, the number of illegal votes that shall appear to have been given to him.

Who may contest election.

Proviso.

Sec. 36. That if any candidate or elector, shall choose to contest the right of any person declared duly elected governor or lieutenant governor of this state, such contestor shall give notice in writing, to the person whose election he means to contest, or leave a written notice thereof at the house where he last resided, within twenty days after the proclamation of such election, expressing the points on which the same is contested; and shall in like manner, and within the same time, give notice thereof to the presiding officers of each house of the general assembly, who shall forthwith make out a notice in writing and deliver the same to the sergeant at arms of the senate, who shall give a copy thereof to the person whose election is contested, or leave a copy thereof at the house where he last resided, that his election has been contested, and that a committee of the general assembly will meet on some day certain, which shall be fixed on by such presiding officers, to hear and examine the evidence of the parties concerned.

Elect'n for Gov. how contested

Sec. 37. As soon as the president of the senate and speaker of the house of representatives, shall have received notice of such contest, agreeably to this act, each house shall proceed separately to choose seven persons, members of their own body, in the following manner, to wit: the names of the members of the house of representatives, except the speaker, shall be deposited in a box, and the names of the members of the senate shall be deposited in a box, and it shall be the duty of the secretary of the senate, in presence of the senate, and of the clerk of the house of representatives, in presence of the house, to draw from their separate boxes, the names of seven

Trial.

persons, which persons whose names are so drawn, shall constitute a committee to try the validity of such contested election, and who after being duly sworn, shall in joint meeting, proceed to hear and determine the same.

Powers of committee.

Sec. 38. The committee aforesaid, when met agreeably to the provisions of this act, shall have power to send for persons or papers, and take all necessary means to procure testimony, the same privilege being extended to the person whose election is contested, for which purpose the committee shall have power to adjourn from day to day, or to a day certain, as the nature of the case may require.

Evidence.

Sec. 39. No evidence shall be heard by said committee, unless it be evidence in support of the points made in the notice served on the person whose election is contested.

Contestor shall be a voter.

Sec. 40. No person shall contest any election, unless he shall have previously taken an oath, before some person duly authorized to administer oaths in this state, that he is a qualified voter of the state of Indiana, and that the charges and specifications, or points on which he means to rely, as set forth in the notice delivered to the person whose election is about to be contested, are true as he verily believes; which affidavit shall be delivered to the presiding officer of the senate.

CHAPTER XXXIII.

AN ACT to provide for the Election of Electors of President and Vice President of the United States.

[APPROVED, JANUARY 26, 1832.]

First & quadrennial elections of electors.

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the qualified voters of this state, shall on the first Monday of November next, and on the first Monday in every fourth succeeding year, assemble in their respective counties, at the usual places designated for holding elections, and proceed to elect a number of electors of president and vice president of the United States, equal to the number of senators and representatives to which this state may be entitled, by law, in the congress of the United States, at the time when the president thus to be chosen should come into office; and where no apportionment of representatives shall have been made, after enumeration, at the time of choosing electors, the number of electors shall be according to the existing apportionment of senators and representatives; which election shall commence and close at the same hours, and be conducted in the manner, as is or may be directed by law for electing members of the general assembly of this state: *Provided always,* that it shall be the duty of each and every sheriff within this state, to give notice of the time of holding such elections, together with the number of electors to be elected, by publishing the same in

Ratio.

How conducted.

Notice by sheriff.

some newspaper within the county, or by advertising the same in manuscript advertisements, to be set up at the most usual places of holding elections in the respective townships, at least twenty days preceding the time of holding said election.

Sec. 2. That it shall be the duty of the judges of such election, in the several townships, to make out a certificate under their hands and seals; which certificate shall certify the number of votes, in words at full length, that each person received for elector; and the same shall be attested by the clerks of said election; which certificate shall be sealed, in the presence of the judges of such election, and the same shall be put into the hands of one of the judges of the election, who shall on the ensuing Wednesday, deliver the same to the clerk of the circuit court, at the court house or usual place of holding courts in and for said county, or in his absence to his deputy; and in case there is neither clerk nor deputy, then to the sheriff of the county; and if there is no sheriff, then to the coroner thereof, who shall, in the presence of all the judges of elections, who may attend from the different townships, between the hours of twelve and four o'clock of said day, compare the different returns, and make out, in a fair hand, in words at full length, a certificate of the number of votes each candidate for elector received in the county, agreeably to the returns received from the several townships; which certificate shall be signed by the clerk, deputy, sheriff or coroner, who may attend, and be sealed with the seal of the county, to be used for that purpose, and delivered by such clerk, deputy clerk, sheriff or coroner, as the case may be, to the marshal, that may be appointed, to convey the votes from the district in which said county is situate, to the seat of government.

Cert's of elect'n to be given by the judges.

To be deliv'rd to the marshal.

Sec. 3. That it shall be the duty of the several marshals appointed by virtue of the provisions of this act, within this state, or their deputies, which in case of sickness or unavoidable accident, they may appoint, to deliver such certificate to the secretary of state, on the fourth Monday of November, between the hours of nine and eleven o'clock of the morning of said day, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor and all the marshals who may attend from the different districts in this state, between the hours of twelve and six o'clock on said fourth Monday of November, to open and compare the certificates so delivered by the marshals, and read aloud the number of votes each person has received for elector of president and vice president of the United States, and shall make out a fair abstract of the names of the persons voted for, and the number of votes given to each; and it shall be the duty of the governor, forthwith to make out for the persons having the highest number of votes, certificates of their having been duly elected electors of president and vice president of the United States, and to transmit by the marshals, or some special messenger, the proper certificate to each, and shall forthwith cause the election of electors to be published in the newspaper printed at the seat of government. But if more than the number

Marshal shall deliver cert. to sec'y of state.

Sec'y of state shall open and proclaim the votes.

Cert. for elect'rs and how transmitted.

Publication in newspaper.

In case of tie,
lot shall be
drawn.

Elect'rs shall
vote at 12 o'clock
on the day, &c.

Electors shall
meet the gov'r,
&c. and case of
absence of any
elect'r, electors
present shall e-
lect one.

In case of tie, in
filling vacancy,
lot shall be
drawn.

Notice how giv-
en to elect'r e-
lected to fill va-
cancy.

Return districts.

Gov. shall app't
a marshal for
each district.

of persons to be elected, have the greatest and an equal number of votes, then the election of those having such equal number of votes, shall be determined by lot, to be drawn by the secretary of state, in the presence of the governor and the marshals aforesaid.

SEC. 4. That the electors who shall be chosen as aforesaid, shall, at twelve o'clock on the day which is, or may be directed by the Congress of the United States, meet at the seat of government of this state, and shall then and there perform the duties enjoined upon them by the constitution and laws of the United States.

SEC. 5. That each elector of president and vice president of the United States shall, at ten o'clock of the day fixed by the law of Congress, to elect a president and vice president of the United States, meet the governor, whose duty it shall be to attend in the Representative chamber, and it shall be the duty of the governor, forthwith to deliver to the electors present, a certificate of the names of all the electors, and if upon examination, it shall be found that one or more of said electors are absent, and shall fail to appear before eleven o'clock in the morning of said day of election of president and vice president of the United States, the electors then present, shall immediately proceed to elect by ballot, in presence of the governor, a person or persons to fill such vacancy or vacancies, as may have been occasioned by the non-attendance of one or more of the electors.

SEC. 6. That if more than the number of persons required to fill the vacancy or vacancies as aforesaid, shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes, shall be determined by lot, to be drawn by the governor, in the presence of the electors attending; otherwise, he or they to the number required, having the greatest number of votes, shall be considered as elected to fill such vacancy or vacancies.

SEC. 7. That immediately after such choice is made, in manner aforesaid, the name or names of the person or persons so chosen, shall forthwith be certified to the governor, by the electors making such choice; and the governor shall immediately give notice in writing, to be given to each and every of the electors to be chosen to fill such vacancy or vacancies as aforesaid; and the person or persons so elected and notified, shall be electors, and shall forthwith meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on him or them, as electors as aforesaid, by the constitution and laws of the United States and of this state.

SEC. 8. That each judicial circuit of this state, shall compose one return district, and shall be numbered as the circuits are numbered when the votes are taken.

SEC. 9. It shall be the duty of the governor of this state, on or before the first Monday in August, every year, when a president and vice president of the United States is to be elected, to appoint some trusty citizen of the state of Indiana, in

each of the aforementioned districts, who shall be known as the marshal of such district, to be in office until all the duties required of such officer by this act, are performed, and no longer; and it shall be the duty of such marshal, within ten days after receiving the appointment aforesaid, and before the first Monday in November, in the year aforesaid, to go before some officer authorized by law to administer oaths, and shall there make an affidavit, that he will without fraud or delay (accidents accepted) perform the several duties required of him by this act, and well and truly deliver the several certificates, or return of votes for electors of president and vice president of the United States, to the secretary of state, as he may receive the same, at the different counties in such manner as is prescribed by law, and shall have the same endorsed by the officer that may administer the oath, on the back of the governor's appointment, which shall be an authority for such marshal to receive the certificates from the officer of the county, who may be in possession of the same. It shall be the duty of the marshal of each district, to bring the returns from each county in his district, to the seat of government, at such time and in such manner, as is prescribed by this act.

SEC. 10. The judges and clerks of elections, shall be allowed the same compensation that is allowed in other cases; and the officer making the certificate in the presence of the judges, shall be allowed the sum of one dollar for the same; and the several marshals shall be allowed ten cents per mile, for each mile they may travel, in collecting the returns, and ten cents per mile for each mile they may travel to and from the seat of government, from the nearest county in their districts to the same, to be computed by sections, from county seat to county seat, and from the nearest county seat as aforesaid to the seat of government, to be audited by the auditor, and paid out of the state treasury, by the treasurer, out of any moneys not otherwise appropriated.

SEC. 11. That in all cases when the offices of both president and vice president of the United States shall become vacant, and notice thereof is given to the executive of this state, it shall be the duty of such executive officer, to issue writs of election to the sheriffs of each county in this state, directing them to proceed in the same manner, to advertise an election to fill such vacancies, as they are bound to do by the provisions of this act; and it shall be the duty of all sheriffs, judges, clerks, marshals, and other officers, and all others, together with the governor, and they are hereby enjoined and directed to do and perform in such cases, and under the same penalties, all and singular, the duties and acts enjoined and directed by this law. And it shall be the duty of the electors, to proceed to elect, in the same manner as is required by this act, any thing herein contained to the contrary notwithstanding.

SEC. 12. That the sheriffs of the different counties, shall each receive for his services performed under this act, the following fees, to-wit: for advertising the election, one dollar;

Oath of mar-
shal and his du-
ties.

Compensat'n to
judg's and cl'ks
of election.

Fees of marshal.

Elect'n of elec-
tors, in case of
vacancy in the
office of pres't &
vice pres't of
the U. S.

Compensation
to sheriff.

which fee shall be allowed by the auditor and paid by the treasurer out of any moneys not otherwise appropriated.

Compensation
to electors.

SEC. 13. That each and every elector, who shall attend as elector at the seat of government as aforesaid, shall be entitled to receive two dollars for each and every day's attendance, and two dollars for every thirty miles travel of the estimated distance by the most usual route, from his place of residence to the seat of government, and the like sum for returning; which sum shall be allowed by the auditor, on the certificate of the governor, and paid by the treasurer, out of any moneys not otherwise appropriated.

Penalty vs.
judge and clerks
for neglect of
duty.

SEC. 14. That the judges and clerks of elections, under the provisions of this act, for failing to perform the duty enjoined upon them by this act, shall forfeit and pay the sum of one hundred dollars, to be recovered in favor of the state, for the use of the seminary of the proper county, on motion in any court having jurisdiction thereof, the party having ten days previous notice of such intended motion. All marshals and other officers, who shall neglect or refuse to perform their duties enjoined upon them by this act, shall forfeit and pay any sum not exceeding one thousand dollars, to be recovered by indictment, or on motion, in any court of record having jurisdiction of the case in this state, the defendant having ten days notice of such motion; and it shall be the duty of the prosecuting attorney, within whose bounds the same may be, to prosecute such defendant, as is directed in this section; and such fine after deducting ten per centum as a fee for said attorney, shall be paid to the trustees of the county seminary, for the use of the same.

Against marshal
&c.

SEC. 15. The marshals named in this act are hereby authorized to appoint one or more deputies, where the necessity of the case may require it, which deputy or deputies are required to take the same oath that the said marshal is required to take; and in all cases where any marshal in this act named, may die, or remove from this state, after the fifteenth of August, next before such election, it shall be the duty of the associate judges of the circuit court of the county where such marshal resided, to convene and forthwith proceed to appoint a marshal in place of such deceased or removed marshal; which said marshal, when so appointed, shall take the same oath, perform the same duties, and receive the same compensation, and shall be liable to the same penalties that a marshal appointed under other provisions of this act would be entitled to receive, perform, take, or sustain. All laws and parts of laws heretofore in force in this state, authorizing the appointment and defining the duties of electors, be, and the same are hereby repealed.

Marshal may
appoint deputy,
and vacancy in
office of, how
filled.

Repeal.

This act to take effect and be in force from and after its publication.

CHAPTER XXXIV.

AN ACT to provide for electing county and township officers.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when the office of associate judge in any county shall become vacant, from any cause whatever, except the expiration of his regular term of office, it shall be the duty of the clerk of the circuit court of the proper county to certify the fact of such vacancy to the governor, who shall forthwith issue a writ of election directed to the sheriff of the county where such vacancy may have happened, commanding him to cause an election to be held in the several townships for the purpose of filling the same giving twenty days notice in writing to be put up at one of the most public places in each township, or published in some newspaper printed in the county; which election shall be conducted in all respects as general elections are, the inspector or one of the judges of each township shall meet at the clerk's office, on the succeeding Monday and compare the several returns in the presence of the clerk of the circuit court, who shall make out a certificate under his hand and seal of the person duly elected, which he shall seal up and transmit to the secretary of state, except in case of contest; in which case the certificate shall not be transmitted until such election shall be confirmed, when the person duly elected shall be commissioned by the governor, and qualified into office according to the constitution and laws of this state.

Vacancy for as-
sociate judge,
how filled.

Certificate of
election.

SEC. 2. Should there be neither sheriff nor coroner in such county, it shall be the duty of the clerk of the circuit court to give the notice required to be given by the sheriff, and should there be no clerk in such county, or in his absence or sickness, it shall be the duty of the inspectors or judges making such returns to make out under their hands and seals a certified statement of the result of such election and transmit the same to the secretary of state.

When there is
no sh'ff or cl'k.

SEC. 3. Whenever any vacancy shall happen in the office of clerk of the circuit court by death, resignation or otherwise, it shall be the duty of the circuit court to appoint a clerk, pro tem, and if such vacancy shall happen in vacation, the associate judges of said county shall meet as soon as practicable thereafter and proceed to fill such vacancy, and the person so appointed shall take the same oath and give bond in such sum as required to be given by clerks regularly elected, and shall hold his office until the next annual election and until his successor shall be elected and qualified. And it shall be the duty of the sheriff of such county on the happening of any such vacancy to give immediate notice thereof to the associate judges.

Vacancy for cl'k
how filled.

SEC. 4. That in all cases when the office of recorder shall become vacant by death, resignation, removal or otherwise, it shall be the duty of the board doing county business in the county in which such vacancy shall so happen to appoint some

Vacancy for re-
corder, how fill-
ed.

suitable and qualified person to fill the same, who shall previously to entering upon the duties of his office, give bond and security for the faithful discharge of the same in like manner and under like rules and regulations as are prescribed by law, for recorders that are regularly elected, who shall continue in office until the time of the next general election, at which time an election shall be held to fill such vacancy.

County to be divided into townships.

SEC. 5. The board doing county business in each and every county shall lay off any number of townships in their respective counties that the convenience of their citizens may require, describing the bounds thereof, which bounds shall be recorded: the board doing county business in each county shall from time to time make such alterations in the bounds of townships as they may think proper.

Election for j. p.

SEC. 6. When the board doing county business shall divide any new county into any new townships they shall appoint an inspector of elections in each new township, and order an election in every such township, for such number of justices of the peace as they shall assign to each, not exceeding two to any one township: *Provided however*, that the board doing county business may on petition order an election for an additional justice of the peace if they believe the public necessity require it, which election shall be governed in all respects as general elections are, and the persons having the highest number of votes to the number to be elected in each township shall be duly elected, and the returns of such election shall be made to the clerk of the circuit court of the proper county the Wednesday following the election; a certified copy of which returns shall be forwarded by the said clerk to the office of secretary of state within ten days after received, unless in cases of contested elections, certifying that such persons have been duly elected justices of the peace in such township and county; and the person so returned as elected shall be commissioned by the governor and qualified into office in the same manner that associate judges are commissioned and qualified.

J. P. elected for incorporated towns.

SEC. 7. When in the opinion of the board doing county business, it shall be necessary, they may order two additional justices of the peace to be elected at each county seat and one in any other incorporated town in said county, to reside therein, and in such cases all the electors of the township wherein such election is held shall be entitled to vote, and in case any justice of the peace so elected for any such town, shall remove out of the limits thereof his office shall become vacant and all his authority cease.

J. P. removing the limits of the town, office vacated.

SEC. 8. When any justice of the peace by the formation of any new township, shall be brought within the limits of the same he shall be considered a justice of the peace for such new township for and during the residue of the term for which he was elected, but whenever any justice of the peace shall remove out of the township wherein he was elected, his office shall be vacated and his authority by virtue thereof shall cease. The clerk of the circuit court is hereby authorized to receive the resignation of justices of the peace, and in that and all oth-

er cases of vacancies of the office of justices of the peace it shall be the duty of the clerk of the circuit court to cause the same to be filled by election, giving twenty days notice thereof in writing, set up in three of the most public places in such township.

SEC. 9. All contests of elections for county and township officers shall be governed by the laws regulating general elections, except that the board doing county business of any county when called together to receive testimony in cases of contested elections, shall be judges to decide the contest of the election of any such county and township officers. Elections how regulated.

SEC. 10. That in all contests of elections for county and township officers in the new counties, at the first election therein it shall be lawful for such contested election to be decided at the nearest county seat to the county where such contested election originated, and for that purpose the board doing county business of the county where such contest is to be tried is hereby constituted a competent tribunal to try and determine the same in all respects and subject to the like rules and regulations as if the said contest had originated in their own county. Contest how decided.

CHAPTER XXXV.

AN ACT providing for the election of United States Senator, and other officers by a viva voce vote of the Legislature.

[APPROVED FEBRUARY 3, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter all elections of United States senator, and for all other officers to be elected by the general assembly of this state, shall be *viva voce*, except the elections of auditor of public accounts, treasurer of state, secretary of state, and president judges of the circuit court, which elections shall as heretofore be by joint ballot of both houses. Election shall be viva voce.

SEC. 2. All laws or parts of laws contravening the above enactment, shall be, and the same are hereby repealed.

This act to be in force from and after its passage.

AN ACT to repeal an act entitled "an act to provide for the election of United States Senator, and for other purposes, approved February 3, 1837."

[APPROVED DECEMBER 8, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the act entitled an act to provide for the election of United States senator, and for other purposes, approved February 3, 1837, be and the same is hereby repealed except as to U. S. Senator. Repeal except as to U. S. Senator.

led, except so much of said act as relates to the election of United States senator.

This act to take effect and be in force from and after its passage.

CHAPTER XXXVI.

AN ACT concerning proceedings in Ejectment, and for the relief of occupying claimants of land.

[APPROVED JANUARY 13, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That every tenant to whom a declaration in ejectment shall be delivered, for any lands, tenements, or hereditaments, within this state, shall forthwith give notice thereof to his, her, or their landlord or landlords, or his, her or their bailiffs, receivers, agents or attorneys, under the penalty of forfeiting the value of two years rent of the premises so demised or holden, in the possession of such tenant, to the person of whom he, she or they hold, to be recovered by action of debt, to be brought in any court where the same shall be cognizable.

Tenant concealing declaration in ejectment, to forfeit two years rent.

SEC. 2. That it shall and may be lawful for the court, where such ejectment shall be brought, to suffer the landlord or landlords, to make him, her, or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, she, or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance: but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he or she had appeared, ought to have done, then the court where such ejectment shall be brought, shall and may permit such landlord so to do, and order stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Landlord admitted defendant in ejectment.

Limitation of action of ejectment.

SEC. 3. No action of ejectment shall be commenced or maintained, for the recovery of any lands or tenements against any person or persons who may have been in the quiet and peaceable possession of the same, under an adverse title for twenty years, either in his own right, or the right of any other person or persons, under whom he claims; and any action of ejectment, commenced contrary to the provisions of this act, shall be dismissed at the cost of the party commencing the same: *Provided however,* that this act shall not be so construed, to effect any person who may be a feme covert, non compos

Saying

mentis, a minor, or any person beyond the seas, within five years after such disability is removed.

SEC. 4. That in all cases where any occupying claimant, being in quiet possession of any land for which such person can shew any plain and connected title in law or equity, derived from the records of some public office, or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale for taxes, or under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, if any person or persons shall set up and prove an adverse and better title to said lands, such occupying claimant holding as aforesaid, shall not be evicted or turned out of possession, until he or she shall be fully paid the value of all lasting and valuable improvements made on said lands by such occupying claimant, or by the person or persons under whom he or she may hold the same, previous to receiving actual notice by the commencement of suit on such adverse claim, by such eviction, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land, without improvement made thereon as aforesaid, upon the demand of the successful claimant as hereinafter provided.

When occupying claimant shall be paid for valuable improvements.

SEC. 5. The court rendering judgment in any such case, against such occupying claimant, shall, at the request of either party, cause a jury of twelve good and lawful men of the proper county, to be empanelled and sworn, as in other cases of trial by jury, to assess the value of all lasting and valuable improvements made as aforesaid, on the land in question previous to receiving actual notice as aforesaid, of such adverse claim; and in assessing the value of such improvements, the jury shall take into consideration, all damages which the land in question may have sustained by waste or cultivation, and deduct the same from the estimated value of such improvements; and the said jury shall also assess the value of the land in question, at the time rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste or cultivation as aforesaid; and if either party be aggrieved by such assessment or valuation, the court may, in their discretion (as in other cases of trial by jury) set aside the verdict of assessment and grant a new assessment; or either party may, for error, appeal to the supreme court, or have a writ of error as in other cases.

The value of improvements, how by whom estimated.

Persons aggrieved, how redressed.

SEC. 6. The successful claimant in all cases, may at his election either demand of such occupying claimant, the value of the land without the improvements so as aforesaid assessed, and convey the land in question to such occupying claimant, or pay the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow; and if such successful claimant shall pay the occu-

The successful claimant may sell the land, or pay the value of improvements to the occupying claimant.

Occupying claimant failing to pay the value of the land, ousted.

When occupying claimant may continue in possession.

pying claimant, the value of the improvements so as aforesaid assessed, within the time allowed by the court, or if, on demand of the value of the land without the improvements, and tender of a deed of the land in question as aforesaid by the successful claimant, the occupying claimant shall refuse or neglect to pay the successful claimant the value of the land, without the improvements so as aforesaid assessed, within such reasonable time as the court shall allow, then a writ of possession shall be issued in favor of the successful claimant; but if such successful claimant shall not demand the value of the land in question, without the improvements, and tender a deed as aforesaid, and shall refuse to pay the occupying claimant the value of improvements, so as aforesaid assessed, within such reasonable time as the court shall allow, such occupying claimant shall not be evicted from such land, but shall be suffered to remain in possession; and in no such case shall the occupying claimant who may be evicted, be liable to any action or prosecution for or on account of any rents or profits accruing, or waste or damages done to said land, previous to receiving actual notice as aforesaid of such adverse claim, unless such waste or damages shall exceed the value of the improvements so as aforesaid to be assessed, and then only the amount of such excess.

CHAPTER XXXVII.

AN ACT concerning Enclosures and Trespassing Animals.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That all fields kept for enclosures, shall be enclosed with a fence composed of sufficient posts and rails, posts and paling, or palisadoes or rails alone, laid up in the manner of a worm fence; which posts shall be deep set and strongly fastened in the earth, and all fences composed of posts and rails, posts and paling or palisadoes, shall be at least five feet in height; and all fences denominated worm fences, shall be at least five feet and a half in height, the uppermost rail in each panel thereof supported by strong stakes, strongly set and fastened in the earth, so as to compose what is commonly called staking and riding, otherwise the uppermost rail in each panel, shall be braced with two strong rails, poles or stakes, locking each angle or corner thereof; and in all the foregoing materials, the apertures between the rails, palisadoes or palings within two feet of the surface of the earth, shall not be more than four inches, and from the distance of two feet from the surface, the apertures between such rails, palings or palisadoes shall not be more than six inches; and that in all worm fences

staked and ridged, the worm shall be at least four feet six inches; and if locked as aforesaid, the worm shall be at least five feet; and all fences of the height and strength herein required, shall be considered lawful against horses, asses, mules, hogs, sheep and neat cattle: *Provided*, that a fence of full height and strength, as required by this act, shall be a lawful fence against horses, mules, asses, and neat cattle, but unless otherwise constructed agreeably to the provisions of this act, shall not be a lawful fence as regards sheep, goats and hogs.

SEC. 2. For the better ascertaining and regulating partition fences, it is hereby directed that when any neighbors shall improve lands adjacent to each other, or where any person shall enclose any land adjoining another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as enclosed on both sides) shall be equally borne and maintained by both parties; and the fence viewers of the proper township shall proceed at the request of any person or persons, who shall feel himself, herself or themselves aggrieved, to view all such fences, about which any differences may arise; and the aforesaid fence viewers in each township respectively, shall be the sole judges of the charge to be borne by each party, and of the sufficiency of all fences, whether partition or otherwise; and when they shall adjudge any fence to be insufficient, they shall give notice thereof, to the owners, proprietors or occupiers of the same, upon request of the other, and due notice being given by such viewers, if any person having such insufficient fence, shall refuse or neglect to make or repair such fence, or to pay the moiety of the charge of any fence before made, being the division or common fence, within twenty days after notice given, then upon proof thereof, before two justices of the peace of the proper county, it shall be lawful for such justices, to order the person aggrieved thereby, to make or repair such fence, who shall be reimbursed in his costs and charges, from the person so refusing or neglecting to make or repair such partition fence as aforesaid; or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, (as the case may be) and if the delinquent shall neglect or refuse to pay to the party injured, the moiety of the charge of any fence before made, or reimburse the costs and charges of making or repairing any such fence, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof; the overplus, if any, to be returned to such delinquent: *Provided*, that nothing herein contained, shall be intended to prevent or debar any person or persons from enclosing his, her, or their own grounds, in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dykes, hedges or ditches. All such walls and fences to be in height at least five feet from the ground, and all dykes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn or

Partition fences by whom to be made, and how maintained.

Duties of fence viewers.

Notice of insufficiency of fence.

Order to repair division fences, how enforced by justices.

Expenses, &c. to be levied on delinquent's goods. Proviso, as to other modes of enclosing.

Proviso.

other quickset, so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *And provided also*, that such walls or fences of timber, other than those heretofore mentioned, and dykes, hedges and ditches, shall be subject to all the provisions, inspections and restrictions respectively, to which by this act any other enclosure or fence is made liable, according to the true intent and meaning hereof.

Trespassing animals may be restrained.

SEC. 3. That if any domestic animal or animals, shall trespass by breaking into the lawful enclosure of any person or persons, such person or persons being injured by such trespassing animal or animals, the same may seize and detain, and may retain until he, she or they shall recover and receive the damages sustained by such trespass, together with the costs of advertising, and reasonable charges for keeping such animal or animals so detained, in manner hereinafter directed.

Notice of distress, how given

SEC. 4. Every person making such distress, shall within twenty-four hours, thereafter, give notice thereof to the owner or owners of such animal or animals, if such owner or owners can be conveniently found; if not, then the person distraining shall within three days after the distress made as aforesaid, cause an advertisement describing the marks, brands, stature and color of such animal or animals, and of the place where the same may be taken up, to be affixed in a conspicuous manner, at the most public place in the township where the distress was made, and if upon such notice or advertisement, the owner or owners shall appear, but neglect or refuse to make a tender of reasonable satisfaction to the party injured, for the damage sustained by such trespass, and for keeping such animal or animals, or if the said person making the distress, shall not accept the said satisfaction, either of the parties aforesaid may apply to any justice of the peace of the proper county, who shall on such application, issue his warrant directed to any two honest and respectable freeholders of the neighborhood, commanding and enjoining them forthwith, to view the said trespass, and to value, appraise, and ascertain the injury and damage sustained thereby, (having due regard to the lawfulness of the fence of the enclosure at the time of the trespass,) with the expenses and costs of keeping said animal or animals, and to make report on oath thereof to him, with all convenient speed; which said valuation and appraisal and return, they the said freeholders are enjoined to take accordingly; and if the said valuation and appraisal shall not amount to more than the sum of money tendered to the party injured, as a recompense for the damage done as aforesaid, before the complaint made, then the said justice shall give judgment for the same only, in favor of the party refusing such tender, and reasonable costs and charges to the other party for the unjust vexation: but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then and in that case, the said justice shall award and give judgment for the valuation aforesaid, to the party injured, with reasonable costs and charges for keeping the animal

Owner may tender damages and reclaim the animal.

Damages, how ascertained.

Judgment of j. p. on assessment of damages.

or animals, and shall award execution upon every such judgment, with costs of suit accordingly.

Liability for injury to animals.

SEC. 5. Whoever shall hurt, kill, or damage any such animal or animals, by hunting and driving them from such enclosure, by neglecting to provide them with sufficient food and water after they have been distrained, or in any other manner intentionally, shall be liable for all damages so sustained, to the owner or owners of such animal or animals.

When notice of distress shall be given in a newspaper.

SEC. 6. If no owner or owners appear and make out his, her, or their claim to any such property so distrained, within two weeks after the same shall have been advertised as aforesaid, the person or persons making such distress, shall forthwith under the penalty of twelve dollars, cause the like advertisement to be published three times in one or more newspapers published in the county where the distress was made, or if there be none in the county, then such advertisement shall be conspicuously affixed to the court house door of the county; and the party distraining, shall make application at the expiration of two months after such publication, to a justice of the peace of the county, who is hereby authorized and required to issue his warrant, to two honest and respectable freeholders of the proper township, and cause them upon their oaths or affirmations, to view, value, and appraise the animal or animals so distrained, and to ascertain the damage done by the same, with reasonable charges for keeping such animal or animals, and to make return thereof to him as aforesaid; upon which valuation and return, the property of and in the animal or animals so valued, shall become, and is hereby vested in the person making such distress; but nevertheless the person so distraining and acquiring such property, shall be answerable and accountable to the owner or owners aforesaid, for the valuation money aforesaid, at any time afterwards, within the space of five years next after the publication of such advertisement as before mentioned in this act, having first deducted therefrom the costs of such proceedings, advertisements and charges, for keeping said animal or animals, together with the damages ascertained by the before mentioned freeholders; but if the said owner or owners, shall not appear and demand the same within the time limited by this act, then the said person or persons, making such distress, upon demand made, shall pay over all such surplus money to the treasurer of the proper county, for the use of said county, under the penalty of double the sum retained in his, her or their hands, contrary to the provisions of this law.

Animal when valued, and how

Value of damage and expenses of keeping.

Distrainer liable for valuation within 5 years.

Value of animal undemanded, &c. how applied

SEC. 7. If any person or persons so distraining, shall neglect to give such notice as herein before directed, or shall neglect to set up and publish such advertisement as herein required, he, she, or they shall lose all right to recover any sum or sums of money, for any such trespass, but shall deliver up the animal or animals so distrained, to the owner or owners thereof, without any reward or recompense whatever; and one half of all the fines imposed by virtue of this act, shall be to the use of the owner of such animal or animals, and the other half to the

Penalty for violating this act.

Penalty, how re- use of the proper county, to be recovered in a summary way,
covered. as debts not exceeding fifty dollars may by law be recovered.

Further penalty. SEC. 8. If any persons or person shall willingly and know-
ingly keep and retain any horse, mare, gelding, mule, ass,
head of neat cattle, sheep or hog, within his, her or their en-
closure, for the space of twenty-four hours, without giving the
notice required by this act, or shall neglect or refuse to comply
with any other of the requisitions of this act, so far as it relates
to trespassing animals, he, she, or they shall forfeit and pay
for every such offence the sum of twelve dollars, to be reco-
vered and applied in manner aforesaid.

CHAPTER XXXVII.

AN ACT regulating the taking up of Animals going astray, and Water Crafts, and
other articles of value adrift.

[APPROVED FEBRUARY 17, 1838.]

Taker up of wa- SEC. 1. *Be it enacted by the General Assembly of the state*
ter craft to adv. *of Indiana,* That if any person or persons, shall take up any
in 5 days. boat, flat, periogue, canoe, raft or other article of value adrift,
he, she, or they shall within five days after taking the same in
possession, cause the same to be advertised, in at least three of
the most public places in the township, where such property is
taken up, stating the time it was taken up, and giving a particu-
lar description of the property.

In ten days to SEC. 2. In case the owner of such property so taken up adrift,
have same ap- shall not appear, claim and prove the same within ten days af-
praised, and ter notice given as aforesaid, it shall be the duty of the ta-
how. ker up, to report the same to some disinterested justice of the
peace in the township, who shall issue his warrant to three dis-
interested householders, of the neighborhood, (unless they can
be otherwise procured) directing them or any two of them, to
appraise such property and return their appraisal in writ-
ing to said justice, who shall cause them to make oath that
their said appraisal was made without partiality, favor, or
affection, and that it contains a true description of the property.
All of which shall be retained and filed by said justice, who shall
forthwith transmit a copy thereof to the clerk of the coun-
ty, who shall immediately enter the same on his book of es-
trays.

Proceed'gs to be SEC. 3. Any person who shall take up any head of neat
had on taking up cattle, any sheep, hog, or goat, or any horse, mule or ass as-
of neat cattle. tray, shall proceed in the same manner as persons taking up
water crafts are directed to proceed; and shall also, at the time
of making the report aforesaid to said justice, deliver to said
justice upon oath or affirmation, a particular description of the
marks, brands, color, size, and age of every such animal, and
shall also make oath, or affirm that the marks, or brands

thereof, have not been altered by him or her, or by any other per-
son to his or her knowledge, either before or since said taking up.

SEC. 4. It shall be the duty of the taker up, at the time Fees of justice,
said appraisal is returned, to pay to said justice the cl'k and printer.
sum of fifty cents, one half of which said justice shall re-
tain for his own services, and the other half he shall transmit
to the said clerk at the same time that he forwards to him the
said copy of the appraisal and description. But if from
such appraisal it shall appear that such property is worth
more than ten dollars it shall then be the duty of said taker up,
to pay to said justice the sum of one dollar, to be by him di-
vided and appropriated as aforesaid, and also shall pay him the
further sum of one dollar, which sum, together with a copy of
said appraisal and description, said justice shall cause to
be transmitted to the printer of the nearest newspaper, and to
be published therein for three weeks successively: *Provided*
however, that the justice in making out his notice for publica-
tion as required by this act, shall only be required to give from
the appraisal and description on file in his office a particu- To be advertis'd
lar description of the property so taken up, stating the time and
place of taking up, and by whom, the amount of appraisal,
and by whom appraised.

SEC. 5. It shall be the duty of said clerk to cause a suc- Clerk's duty to
cinct description of every such estray or other article adrift, so set up a descrip-
returned to him, together with the amount of the valuation tion and valua-
thereof, to be publicly affixed at the court house door of his tion at c. h. door
county, for the two successive terms of the circuit court there-
after.

SEC. 6. It shall be the duty of the taker up of any estray horse, Horses, mules,
mule or ass, above the age of two years, to take the same to the &c. to be taken
pound of the proper county, if there be one provided and keep to pound.
such horse, mule or ass in such pound, on the first days of every
curcuit court, for the several succeeding terms of said court during
one year after the taking up of such estray or estrays; which shall
be kept in such pound or estray-pen, from eleven in the fore-
noon until three in the afternoon of each first day of said courts.

SEC. 7. As a reward, the taker up shall be entitled to de- Reward for ta-
mand and receive for every horse, mule, or ass, one dollar; for ker up.
every head of neat cattle, fifty cents; for every sheep, goat and
hog, above six months old, ten cents; and in cases of property
adrift, a reasonable sum, to be determined by some disinter-
ested justice of the peace, in the township. Such taker up shall
also be entitled to demand and receive the fees paid by him
and reasonable charges for keeping such estrays or prop-
erty adrift, to be determined in manner aforesaid, before
some disinterested justice of the peace of the proper township,
who shall hear testimony for that purpose. But when the va-
lue of the article so taken up exceeds twenty dollars, nothing
shall be allowed for keeping the same, unless such taker up
specifically state in the claim for keeping such estray that he
or she has not worked or used the same, nor suffered
it to be worked or used by others, which account and state-

When no rew'd shall be allowed. ment shall be in writing, verified by the oath or affirmation of such taker up before some justice of the peace of the township where the same was taken up.

How unclaimed horses, &c. shall be disposed of. SEC. 8. If the owner or owners of any estray horse, mule or ass, whose appraised value exceeds ten dollars, taken up under the provisions of this act, shall not appear within one year after the publication required, and prove his or her property, then and in that case, the taker up shall either pay the amount of the appraisement, after deducting all reasonable expenses, to be ascertained as aforesaid, into the county treasury, or produce the property on the first or second day of the circuit court next ensuing, and the same if produced, shall be sold by the sheriff to the highest bidder, between the hours of ten o'clock, A. M. and four o'clock P. M. of said day, for county funds; and the amount of the sale, after allowing two per cent. thereon to the sheriff, and all lawful charges as aforesaid shall be paid into the county treasury, for the use of the owner or owners of such property, which shall be paid over to him, her, or them, upon the order of the board doing county business, upon sufficient proof made to them of the ownership of such property.

How unclaimed cattle, &c. shall be disposed of. SEC. 9. If the owner of any estray neat cattle, hog or hogs, sheep or goats, taken up under the provisions of this act, whose appraised value exceeds ten dollars, shall not appear and prove the same to be his property, within one year after such taking up, it shall be the duty of the taker up, within ten days after the expiration of said term, unless he elect to pay the amount of the appraisement into the county treasury, after deducting the charges and expenses as aforesaid, which shall be ascertained as aforesaid, to go before the justice of the peace to whom the said estray was returned, or his successor in office, if any, if not before some other disinterested justice of the peace of said township, and inform him that the estray animal or animals remained unclaimed; and such justice shall thereupon direct some constable of his proper township, to advertise and sell such estray or estrays, giving ten days notice by written advertisement in three of the most public places in said township of the time and place of such sale, and the constable shall, within three days after such sale, return the proceeds of such sale to the justice making such order, and the justice of the peace, after paying the constable one dollar and fifty cents for advertising and selling such estray or estrays, and the taker up his costs and charges, to be ascertained and liquidated before such justice of the peace as aforesaid, shall pay the residue into the county treasury, within ten days thereafter, retaining fifty cents for his own services: and in all cases where the appraised value of any estray animal or animals does not exceed ten dollars, the same shall be absolutely vested in the taker up after the expiration of one year from the time of advertising such estray animal or animals; and it shall not be necessary to report the same to the clerk as aforesaid.

When cattle, &c. shall vest in taker up. SEC. 10. That if the owner or owners of any water craft adrift, taken up under the provisions of this act, the appraised value of which exceeds ten dollars, shall not within sixty days

after the publication required, prove his, her or their property, then and in that case, the taker up shall either pay the amount of the appraisement, after deducting all reasonable expenses, to be ascertained and settled as provided by this act, into the county treasury, or notify the sheriff of the proper county, within five days after the expiration of said sixty days, who shall advertise the same for sale at its landing, giving five days notice; and after sale appropriate the proceeds as is required in the case of estray animals, which shall be for the use of the owner or owners, upon proof made to the satisfaction of the board doing county business, and shall be paid upon their order. But if the appraised value does not exceed ten dollars, and it shall remain unclaimed sixty days after advertising, it shall vest immediately in the taker up; and it shall not be necessary to report the same to the clerk of the county.

SEC. 11. Hereafter any property whatever that may be taken up under the provisions of this act, the appraised value of which does not exceed two dollars, the justice of the peace before whom the same was taken up, shall not be required to make any report of the same to the clerk of the court of the county.

SEC. 12. In case the owner of any estay or property adrift, shall appear and claim the same of the taker up, before the same shall be vested in such taker up under the provisions of this act, it shall be the duty of such taker up, to go before the justice to whom said appraisement was returned, if within the township, and if not, before some other disinterested justice therein, when requested by such owner or claimant, in order that said claimant, shall have an opportunity to prove and regain his property. But if the taker up or his legal representatives, shall neglect or refuse to comply with his request, the claimant may apply to said justice, whose duty it shall be to issue his warrant, commanding the taker up, or his legal representative, to come before him and to bring along with him the estray or estrays claimed, if the same be horses, mules or asses, and on the claimant's proving to the satisfaction of the justice, that said property belongs to him, said justice shall order the restoration of the same to said claimant, on his paying the necessary reward, fees and expenses, the amount thereof to be also determined by said justice, and also the costs of said proceedings; and if said claimant shall refuse to pay the same, the said justice shall direct the sale of said property by some constable of the township, who after giving five days notice, shall sell the same to the highest bidder, and return the proceeds to said justice, retaining one dollar for his fees of sale, and said justice, after deducting the said reward, fees, expenses and costs, to be paid to the persons entitled thereto, shall pay the residue to said claimant. And in case the property claimed shall be other than horses, mules or asses, it shall be the duty of the person in whose possession the same may be, to permit the claimant and his witnesses, on reasonable demand made, to examine the same.

SEC. 13. That if the taker up of any property as aforesaid, or any person in whose possession the same may be, after the

How unclaimed water cr't shall be disposed of.

Sale of wter c't

When water c't shall vest in taker up.

When rep't need not be made to clerk.

Owner claiming how to proceed.

Justice may issue his warrant to taker up, to have c'm prov'd

Order of restoration.

Owner refusing to pay expenses property be sold, and how.

Taker up shall permit owner & his witnesses to inspect property.

Remedy for claimant if taker up refuse to give up property.

Judgment by J. P. vs. taker up.

Proceed'gs when estray is restored or lost.

Who may take up estrays.

Where to take up

Cattle &c. when not to be taken up.

Proviso.

Est'ys &c not to be removed from county &c.

claim thereto shall have been adjudicated on as aforesaid and found for the claimant, shall neglect or refuse to deliver the same to be dealt with as aforesaid, the said justice shall issue an execution as in other cases, commanding the constable to take said property, if to be found, to be dealt with according to the judgment of said justice, and should it appear from the return of said constable or otherwise to the satisfaction of said justice, that said property cannot be found, he may, on motion of said claimant, render judgment against the taker up for the appraised value of said property and costs, (making the deductions aforesaid) or said claimant at his option may have his action of trover and conversion, or replevin for the same.

SEC. 14. When any estray or property adrift, taken up under the provisions of this act, the appraised value of which shall exceed ten dollars, shall be restored to the owner, or shall die or be lost, it shall be the duty of such taker up, within one month afterwards, truly to certify in writing, signed by such taker up, to the clerk aforesaid, such restoration, death or loss, and if restored the name and place of residence of the person claiming the same; or the time of such loss or death and the manner thereof.

SEC. 15. That no person shall be permitted or authorized, to take up any estray animal or animals, unless such person shall be a freeholder or householder; and in case any householder who is not a freeholder shall take up any animal or animals going estray, or water craft or other article of value adrift, he shall when he reports the same to any justice of the peace as required by this act, enter into bond with security to be approved by said justice, that he will faithfully and honestly account for said property so taken up according to law; nor shall any person be authorized to take into custody any horse or other stock, except at his or her place of residence, or to drive any horse or other stock out of the woods, to their place of residence and take up the same, unless such horse or other stock shall be found running at large in a wilderness country distant from any settlement, that might be lost to the owner if not taken up, or if the same may be likely to perish for want of food, or on account of the inclemency of the season. But such horse or stock shall not be removed out of the county where found, nor shall any person be authorized or permitted to take up any head of neat cattle, sheep, hog or goat between the first day of May and the first day of November in each year, unless the same be found within the enclosure of the taker up: *Provided always*, that when any animal or animals may be in the act of escaping from their owner or owners, or those entitled to the possession of the same, they may be taken up under the provisions of this act, at any time of the year, or at any place in the county, where they may be found.

SEC. 16. That the taker up of any estray or property going adrift is hereby prohibited, from removing the same out of the county where taken up, so as to prevent the owner thereof from reclaiming the same, for more than the space of three days at any one time.

Sec. 17. That when two or more estrays of the same species or several articles adrift, are taken up by the same person or persons, at the same time, they shall be included in one entry and one advertisement; and in such case the said clerk and justice, shall receive no greater amount for fees, than for one of such species.

SEC. 18. That when any person or persons shall take up any hog or hogs under the provisions of this act, the taker up may kill the same if stock hogs at the expiration of six months, and if the same be fat hogs, at any time after three months after posting the same, or any one or more of said hogs without keeping the same one year as provided in this act: *Provided*, the said taker up shall at his own expense cause the same to be again appraised at the time of killing said hog or hogs, by two freeholders of his, her or their neighborhood, who shall return their appraisement with a description of said estray or estrays to be killed, to the justice posting the same at the time of taking up, or to the justice having in his possession the original papers relating to said estrays: said justice, when said description and valuation is returned to him, shall cause said appraisers above named to make oath that the description and valuation is a true valuation and description of the estray or estrays so appraised; which oath said justice shall file in his office with the original papers, and the said taker up shall forthwith after killing said estray or estrays, pay the amount of said appraisement to the county treasurer for the use of the owner or owners, after deducting the costs and charges of taking up said estray or estrays, which shall be liquidated as in other cases of estrays.

SEC. 19. That any person or persons who may take up any animal going estray, or property adrift, under the provisions of this act, and shall be guilty of neglect or abuse of the same, so as to render it of less value than it was when taken up, or shall kill, sell, or otherwise dispose of the same before the right thereto has vested in him, or shall neglect or refuse to comply with any of the provisions of this act, such person or persons shall on conviction thereof, upon presentment or indictment, in the county where such offence may be committed, be fined in any sum not exceeding double the value of such estray or estrays, water craft or other property adrift, and shall not be allowed any compensation for his or their trouble, and moreover shall be liable to be prosecuted in any court of competent jurisdiction, in an action on the case, by the owner of said estray or property adrift for the damages the same may have sustained thereby.

Several articles to be included in one advertisement &c.

Penalty for neglect or abuse.

CHAPTER XXXVIII.

AN ACT relative to Evidence.

[APPROVED FEBRUARY 17, 1838.]

Depositions de
bene esse when
taken.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any person shall make affidavit before any circuit court, or judge thereof, or master in chancery that such person is a party in any suit then pending, or expects to be made a party in any suit thereafter to be commenced, and that the testimony of a witness to be named in such affidavit is material and necessary to the prosecution or defence of such suit, the court or officer before whom such affidavit is made shall order reasonable notice to be given to the party being or expected to be adverse to such applicant, or to his attorney, that on the day and at the place in such notice to be expressed such witness will be examined *de bene esse* before such judge or master in chancery as shall be specified in said order.

Notice.

SEC. 2. That upon proof that such notice has been given, either by personal service or by advertisement at least three weeks successively in some newspaper printed and published in the proper county or one most convenient thereto (when the person to be notified is not an inhabitant of this state) made to the officer authorized to take such testimony, such officer on the day appointed in said order, or on such other day as such officer shall then appoint, proceed to take the testimony of such witness, and shall insert in the deposition, any answer or declaration of such witness which may be required by either party; and such deposition being carefully read to, and subscribed by said witness, the officer taking the same shall certify to have been taken pursuant to this act.

Depositions to
be filed.

SEC. 3. That every affidavit and order, and every deposition so taken and certified, shall within thirty days after such deposition is taken, be filed in the office of the [clerk of the] circuit court of the county where taken, or where the suit is pending, or where the subject matter of such suit or expected suit may be situate: and upon proof of the death, insanity or absence from the state of such witness, or his or her inability by reason of age or infirmity, to attend, such deposition or a certified copy thereof by the clerk of the court where the same is filed, shall be admitted as evidence in any court in this state, in any cause between the parties named in such affidavit, or in any cause between persons claiming under either of said parties, and shall have like effect as if the said witness had been personally present and given oral testimony therein, saving the right of exception in all cases on account of the incompetency of such witness, or of any part of the testimony contained in such deposition.

SEC. 4. That when any person shall make affidavit as aforesaid, that he expects to be party to a suit, and that the

testimony of a witness not resident within this state, is material and necessary to the prosecution or defence thereof, and shall file the same with any clerk of a circuit court of this state; the said clerk shall make out a commission or authority, directed to any officer authorized by law to take depositions in the state or territory where such witness, upon reasonable notice as aforesaid, and pursuant to the directions of the second section of this act; and such deposition, so taken and certified as aforesaid authenticated by the certificate of the clerk and the seal of the court of the county or district in which the officer taking such deposition resides, to be returned with the commission aforesaid, and proof by affidavit, of the service of notice of taking the same to the court issuing such *dedimus*, shall be of like force and effect as aforesaid.

Clerk may issue
commissions to
take depositions

SEC. 5. *Be it further enacted,* That the printed statute books of this state, and of the late territories of Indiana and Illinois, purporting to be printed under the authority of said state or territories, shall be evidence in all courts and places of the private acts therein contained.

Statute books of
territory evidence

SEC. 6. The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of those states and territories, shall be *prima facie* evidence in all courts or places, of the legislative acts, whether public or private, of those states or territories respectively.

Statute books of
other states evi-
dence.

SEC. 7. Copies taken by the secretary of state of any statute contained in any of the printed statute books of the several states and territories of the United States, which have been or shall be hereafter transmitted under the authority of any such state or territory to this state, and which shall be deposited in the office of the secretary of state, shall be admissible in any court or place, if said copies shall have attached thereto the certificate of the secretary of state under the seal of the same, certifying such copy to be complete and correct, that the statute book from which such copy is taken is deposited in the office of said secretary, and is by him believed to have been received under the authority of the state or territory purporting to have enacted the same.

Certificate of
Sec. of state.

SEC. 8. Copies of the proceedings and judgments of any justice or justices of the peace of any state or territory of the United States, certified by the justice or justices under his or their hands and seals, before whom such proceedings [were had or judgments rendered, that the same are true and complete copies of such proceedings] or judgments, with the certificate of the clerk or prothonotary of any court of record of the county or district where said justice or justices shall hold his or their office or offices, certifying under the seal of said court, that said justice or justices, was or were at the time when such proceedings were had or judgment rendered, and when such copy was taken, duly commissioned and qualified to act as such, shall be admissible as evidence in any of the courts of this state.

Rec'ds of J. P.
of other states,
when evidence.

SEC. 9. Where the proceedings or judgments of any justice or justices of the peace as in the preceding section men-

J. P. may certify judgment of their predecessors' tioned, shall be legally deposited in the hands of the successor or successors of the officer or officers before whom they were had, copies of said proceedings or judgments, certified by the justice or justices having such legal custody of the same, certified in the same manner as is provided in the foregoing section, with the certificate of the proper clerk or prothonotary as aforesaid, shall be received as evidence in the same manner as if such proceedings or judgments had been certified by the officer or officers before whom they were originally had.

Sec. 10. Copies of the proceedings and judgments of any justice or justices of the peace of this state certified under his or their hands and seals, or certified under the hands and seals of such justice or justices as may have the legal custody thereof, and certified as true and complete copies of such proceeding or judgments, shall be received as evidence in the several courts of this state.

Sec. 11. Certificates or instruments either printed or in writing, purporting to be the official act of a notary public of this state, or of any other state or territory of the United States, and purporting to be under the seal and signature of such notary public, shall be received as *prima facie* evidence of the official character of such instruments and of the truth of the facts therein set forth.

SEC. 12. The certificate of the secretary of state under the seal of state, stating the time when any act or acts of the general assembly were deposited in his office, or deposited in the office of any clerk of the circuit court in this state as shall appear from the certificate or receipt of any such clerk, shall be admissible in all the courts of this state as evidence of the facts stated in such secretary's certificate.

SEC. 13. That exemplification of office books and official bonds which are or may be kept in any public office in this state not appertaining to any court, shall be proved or admitted as legal evidence in any court or office in this state, by the attestation of the keeper of the said records or books or official bonds, and the seal of office of said keeper thereto annexed if there be a seal, and if there be no official seal, then such keeper may attach his ink scrawl to the attestation, to which shall be attached the certificate of the clerk and the seal of the circuit court of the proper county where such keeper resides, that said attestation is in due form of law and made by the proper officer: *Provided always*, that it shall not be necessary to obtain the certificate of any clerk of the circuit court to authenticate any such attestation as aforesaid, when any such keeper shall have an official seal, and the said records and exemplifications and copies of records thus authenticated, shall have such faith and credit given to them in any court in this state, or any office therein, as they may have by law or usage in the courts or offices from whence the same are or may be taken: *And provided*, this act shall not extend to the records of any recorder of deeds, or other records of the recorder's office.

SEC. 14. Whenever hereafter the testimony of any president judge or attorney at law may be required by either party

to a cause pending in any circuit of this state, out of the circuit in which such judge or attorney may reside, or whenever the testimony of any associate judge, clerk of the court or sheriff may be required as a witness in any cause pending in the circuit court in any county in this state other than the county in which such associate judge, clerk or sheriff resides, and the court where such cause is pending shall sit at the same time that the court in which such officer resides shall be in session, it shall be lawful for the party wishing the testimony of such president judge, attorney at law, associate judge, clerk or sheriff, after giving the opposite party or his attorney due notice, to take the deposition of such officer, before some person legally authorized to take depositions, under the rules and regulations prescribed by law for the taking of depositions in other cases; and depositions so taken may be read in evidence in such cause in the same manner as the depositions of persons living beyond the jurisdiction of the court.

SEC. 15. Every deposition intended to be read in evidence in any suit at law or in chancery in any court of this state, shall be filed in such court at least one day before such suit is ready for trial, or if the suit is before a justice of the peace any time previous to trial, and such deposition shall be published by order of the court on the motion of either party at any time thereafter. No objection to the admissibility of such deposition in whole or in part as evidence in such cause shall be entertained, unless such shall be made before entering into trial of the cause: *Provided*, that any such objection, the cause of which arises after such trial is commenced, shall be valid: *And provided also*, that if the incompetency of the deponent as a witness shall appear at any stage of the proceedings it shall avoid the deposition of such witness.

SEC. 16. *Be it further enacted*, That no want of belief in any point of religious faith heretofore considered necessary by any court to the competency of a witness, shall in any case be held to affect such competency; but the same shall only go to the credibility of the witness, and for that purpose may be given in evidence to enable the jury or other trier or triers of the facts, to judge of such credibility.

SEC. 17. No witness shall be compelled to answer any question touching his or her want of such belief, but may state the same or not at his or her option.

SEC. 18. Every witness shall take either an oath or affirmation accordingly, as either may be required by or agree or with his or her opinions, being equally liable in either case, to the pains and penalties of perjury, as provided by law.

SEC. 19. Nothing shall in this be so construed as to prevent the examination of any one offered as a witness, for the purpose of ascertaining his or her mental or moral capacity, or knowledge of the civil obligations of an oath or affirmation.

SEC. 20. In all questions affecting the credibility of a witness, it shall be lawful to give in evidence, the general moral character of such witness.

General moral character of witness may be given in evidence.

Objections to depositions, how made.

Competency of witnesses.

Witness shall take oath or affirmation.

Acts of other states when evidence. SEC. 21. *Be it further enacted*, That every act of the legislature of any one of the states or territories of the United States, certified by the secretary, and having the seal of such state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit when offered in evidence in any court of justice within this state.

Rec'ds of courts in other states, when evidence. SEC. 22. The records and judicial proceedings of the several courts of record or within the United States or the territories thereof, shall be admitted in the courts of justice within this state as evidence, by attestation or certificate of the clerk or prothonotary, and the seal of the court annexed, together with the certificate of the chief justice, or one or more of the judges, or the presiding magistrate of any such court, the person who signed such attestation or certificate, was at the time of subscribing it, the clerk or prothonotary of such court, and that such attestation is in due form of law; and such records and judicial proceedings authenticated as aforesaid, shall have full faith and credit given to them in any court within this state, as by law or usage they have in the courts whence they are or shall be taken.

AN ACT prescribing the mode of authenticating copies from the records of the State Board of Internal Improvement.

[APPROVED FEBRUARY 15, 1838.]

Rec'ds of B'd. of Int. Imp't. how authenticated. *Be it enacted by the General Assembly of the State of Indiana*, That the state board of internal improvement be, and they are hereby authorized to procure a seal with some suitable device, to be called the "seal of the state board of internal improvement," to be kept in their office, with which all transcripts and copies from the records of their proceedings may be sealed; and such transcripts and copies so sealed with the certificate of the secretary attached, that such transcripts are full and complete transcripts or copies, shall be admitted as evidence in any of the courts of this state.

This act to take effect and be in force from and after its passage.

CHAPTER XXXIX.

AN ACT subjecting Real and Personal Estate to Execution.

[APPROVED FEBRUARY 4, 1831.]

Real & personal estate subject to execution. SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the personal and real estate of every individual, company, body politic or corporate, including his, her or their goods, chattels, lands, tenements and hereditaments, be

and the same are hereby made subject to execution, to be taken and sold according to the provisions of this act; except that necessary wearing apparel shall not be considered as any part of the estate of any defendant or defendants in execution. Wearing apparel excepted.

SEC. 2. That when hereafter, any writ of execution may issue against the goods, chattels, lands, tenements and hereditaments of any defendant or defendants, it shall be the duty of the sheriff or other officer, to levy such execution upon such part of the estate of such defendant or defendants, as he, she or they may direct; but if no such direction shall be given, the messuage, lands or tenements on which such defendant or defendants may be chiefly situated, shall not be levied upon, unless a sufficiency of other property to satisfy the execution or executions in the hands of the officer, cannot be found. And in all cases the real estate of execution defendants shall be exempt from levy and sale, until the personal estate of such defendants shall be first levied upon and sold, unless such defendants voluntarily authorize the sale upon execution, of their real estate: *Provided*, that nothing herein enacted, shall be so construed as to make it the duty of any sheriff or other officer, to levy upon and sell on execution, property selected for that purpose, by any execution defendant or defendants, if there exist any reasonable doubt whether such defendant or defendants is or are the bona fide owners of such property so selected. Execution, how levied. Defen't may direct on what part to levy. Personal estate to be first taken. Proviso.

SEC. 3. That real and personal estate taken in execution, shall sell for the best price the same will bring at public auction and outcry; except that the fee simple of real estate shall not be sold to satisfy any execution or executions, until the rents and profits for the term of seven years of such real estate, shall have first been offered for sale at public auction and outcry, and if such rents and profits will bring a sum sufficient to satisfy the execution or executions levied thereon; the sheriff or other officer selling the same, shall make to the purchaser thereof, a deed conveying to such purchaser, a term of seven years in and to such real estate, and moreover, forthwith deliver to such purchaser immediate and actual possession thereof; and if such rents and profits will not sell for a sum sufficient to satisfy such execution or executions, then the fee simple, or other estate of the execution defendant or defendants shall be sold, and a deed conveying the same to the purchaser thereof, shall be executed by the officer selling the same. Property shall sell for the best price &c. Rents & profits of real estate for 7 years to be first exposed. 7 years term how conveyed. Conveyance in fee simple.

SEC. 4. That hereafter when any execution shall issue to any sheriff or other officer, against the goods and chattels, lands and tenements, of any execution defendant or defendants, if he, she, or they have families, it shall be lawful for such defendant or defendants, to claim as exempt from execution, the following personal goods, to-wit: one bible, one cow and calf, one bed and the necessary bedding therefor, household and kitchen furniture, not exceeding in value ten dollars, one chopping axe, one weeding hoe, one spinning wheel, and one reel, and the necessary provisions to supply the family two months; which said personal goods, so claimed by such execution defendant or defendants, such sheriff or other officer shall recog- Property exempt from execution.

Proviso.

nize as exempt from execution: *Provided*, the whole amount of property, hereby exempt from execution, shall in no case exceed fifty dollars in value.

Revolutionary soldiers exempt from imprisonment for debt.

SEC. 5. That the body of each and every soldier of the revolutionary war, that now is, or may hereafter become a citizen of this state, shall be exempt from imprisonment for debt, either on *mense* or final process; any law, custom or usage to the contrary notwithstanding. All soldiers of the revolutionary war, who are regularly enrolled upon the pension list, shall be entitled to the provisions of this act, and shall be privileged from arrest, or entitled to be discharged from imprisonment from debt hereafter to be contracted, upon the production of evidence of such enrolment.

Notice of sale of real estate, how given.

SEC. 6. That any sheriff or other officer, levying an execution upon any real estate, shall previous to offering the same for sale, give at least twenty days notice of the time and place of such sale, by posting up written advertisements thereof in three of the most public places in the township, in which such real estate may be situate, and also by advertising the same, for three weeks successively in the newspaper printed and published nearest such real estate, if any such newspaper be printed and published within the bailiwick of such officer. And previous to selling any personal estate on execution, the sheriff or other officer levying thereon, shall give at least ten days notice of the time and place of such sale, by posting up written advertisements thereof, in at least three of the most public places within the township in which such sale may be made.

Notice of sale of personal estate, how given.

SEC. 7. That if the estate of any execution defendant or defendants, taken and sold on execution, by virtue of the provisions of this act, should fail to sell for a sum sufficient to satisfy the debt, damages and costs due and accruing upon such execution, the officer returning such execution, shall make return of his doings thereon accordingly, and another writ of execution may issue, to be credited by endorsement made by the clerk, execution plaintiff, or his agent or attorney, with the sum or sums previously paid or made on any previous execution, upon which writ of execution, the proper officer shall proceed to levy and sell in manner as herein before prescribed, making return of his doings thereon as in other cases.

Execution unsatisfied to be returned.

Alias execution, and its endorsement.

Second levy and return.

Venditioni exponas, when to issue.

Successor of sheriff shall convey land sold by predecessor.

SEC. 8. That whenever it shall so happen that property exposed to sale on execution, under the provisions of this act, cannot be sold for the want of buyers, the officer returning such execution, shall make his return thereon according to the fact, setting forth the property taken in execution, and that the same remains unsold for the want of buyers, and thereupon the writ or writs of *venditioni exponas* may issue, commanding the proper officer to advertise and sell the same according to the provisions of this act. And when any sheriff or other officer who may have sold any real estate under the provisions of this act, shall previous to making a deed therefor to the purchaser, go out of office by death, removal, resignation or otherwise, it shall be the duty of the successor in office of such officer, to

make the necessary deeds to such purchaser, provided the purchase money has been duly paid.

SEC. 9. That if it shall appear upon the face of any writ of execution, or by endorsement thereon, made by the officer issuing the same, that any one or more of the persons against whom the same may be issued, is or are only security for any one or more of the persons against whom such execution may have been issued, the officer executing the same, shall first sell so much of the estate of the principal defendant or defendants, named in such execution, as he may be able to find, before he shall sell any of the estate of such security or securities, unless such officer may be otherwise directed by such security or securities.

Estate of a principal to be first sold.

SEC. 11. That clerks of the circuit courts, may upon request, issue executions directed to the proper officer of any county within this state, whose duty it shall be to obey and execute the same, and make due return thereof to the office from whence the same issued, according to the provisions of this act. And whenever an execution shall be issued in any county in this state, or from the supreme court, directed to the sheriff or coroner of any other county, it shall be lawful for such sheriff or coroner, having received such execution, and discharged all the duties therein required by law, to enclose such execution and forward the same by mail to the clerk of the court who issued such execution, and on proof being made by such sheriff or coroner, that such execution was mailed a reasonable or sufficient time to reach the office from whence it is issued, within the time prescribed by law, such sheriff or coroner shall not be liable to any amercement or penalty for any failure of the safe arrival of such execution, any thing in this act to the contrary notwithstanding: *Provided*, That no sheriff or coroner shall send by mail any money made on such execution unless he be especially instructed so to do by the execution plaintiff or his agent.

SEC. 12. That when any personal estate may be taken in execution, by virtue of the provisions of this act, the officer taking the same may release such property to the execution defendant or defendants, upon such defendant or defendants' executing a bond payable to the plaintiff or plaintiffs in execution in a penalty of double the value of the property so released, conditioned for the delivery of such property, at a time and place named in such condition, to such officer, to be sold according to law; which bond shall be by such officer returned into the office from whence the execution by virtue of which such property may have been taken, issued; and such bond shall be valid in law, and an action may be had thereon whenever the condition thereof may have been violated, and on recovery being had thereon, the amount due on such execution shall be assessed in favor of the plaintiff, provided the property so taken be of sufficient value to satisfy the same, and if not, then the

Delivery bonds.

Suit on delivery bond.

NOTE.—The tenth section of this act is repealed. See Sec. 17 of act regulating trial of right of property.

Judgment. value of the property so taken, together with ten per centum thereon. And on the judgment obtained on such bond there shall be no stay of execution and no delivery bond shall be taken by the officer executing the same, and execution issuing on such judgment, so obtained as aforesaid upon such bond shall be made returnable in thirty days after the date thereof.

SEC. 13. That any person or persons against whom any judgment may be obtained, may have a stay of execution thereon of thirty days, if the sum for which such judgment may have been rendered shall not exceed six dollars; and a stay of execution of sixty days, if such sum exceeds the sum of six dollars and does not exceed the sum of twelve dollars; and a stay of execution of ninety days, if such sum exceed twelve dollars and does not exceed twenty dollars; and a stay of execution of one hundred and twenty days, if such sum exceed twenty dollars and does not exceed forty dollars; and a stay of execution of one hundred and fifty days, if such sum exceed forty dollars and does not exceed one hundred dollars; and a stay of execution of one hundred and eighty days, if such sum exceed one hundred dollars; by procuring one or more sufficient securities to enter on the record of the court rendering such judgment, a recognizance acknowledging himself, herself or themselves bail for the payment of such judgment, together with the interest and costs accrued, accruing and to accrue thereon, which recognizance may be entered in open court, or before the clerk of such court, and the same shall be considered as, and have the effect and force of a judgment confessed, in a court of record against the person or persons acknowledging the same, and their estates, and execution may issue thereon accordingly.

SEC. 14. That when execution of any kind may issue upon any judgment, upon which no stay of execution may have been taken under the provisions of the thirteenth section of this act, the officer issuing the same shall endorse thereon that the same is repleviable, and also the date of the rendition of such judgment; and the person or persons against whom such execution may have been issued, may replevy the same for the length of time specified in the said thirteenth section of this act, from and after the date of the rendition of such judgment, as the same may be endorsed on such execution as aforesaid, by tendering to the officer having such execution in his hands, a bond with one or more sufficient freehold securities, made payable to the execution plaintiff, in a penalty of at least double the amount demanded by such execution, and conditioned for the payment of the full amount demanded by such execution, together with the interests and costs accruing and to accrue thereon, at the expiration of the stay of execution to be fixed according to the provisions of this section, and the said thirteenth section of this act; which bond shall be returned by the officer returning the execution, as a part of his doings thereon, to the office of the clerk from whence such execution issued, which bond shall be by such clerk recorded, and such bond from the date of its execution shall be taken as, and have the force and effect of a

judgment confessed in a court of record against the person or persons executing the same and against their estates, and execution may issue thereon accordingly.

SEC. 15. That on judgments obtained against any justice of the peace, the clerk of the circuit court, sheriff, coroner, county treasurer, county agent, trustee of the county seminary fund, collector of the revenue, or attorney at law, or their securities, for moneys by them collected or received, in trust for others, by virtue of their office, or against any individual or individuals, company or corporation, for money deposited with him or them, no stay or replevy of execution shall be allowed, and on executions issuing on such judgments, the court rendering the same shall order an endorsement to be made, that such execution is not repleviable, and such court shall also order that no stay of execution shall be allowed; and executions issuing upon such judgments shall be returnable in thirty days from the date thereof.

SEC. 16. That if any execution against the estate of a judgment defendant or defendants, be returned by the proper officer with his endorsement thereon, that no goods, chattels, lands or other estate, of such defendant or defendants, can be found to satisfy such execution; or if the person having recovered any judgment, his agent or attorney, shall make and file, in the office of the clerk of the court, in which such judgment may have been rendered, an affidavit, stating that he or she verily believes, that the person or persons, against whom such judgment may be outstanding, is or are about to leave the estate, without leaving within the state a sufficient estate, subject to execution, to satisfy and pay such judgment, or that he or she verily believes that such judgment debtor or debtors does or will conceal his, her or their property, for the purpose of avoiding the payment of such judgment, a writ of *capias ad satisfaciendum* may issue in either case, on the order of the judgment creditor or creditors, his or their agent or attorney, directed to the proper officer of any county in this state, as such judgment creditor or creditors, his or their agent or attorney may order.

SEC. 17. That whenever a writ of *capias ad satisfaciendum* shall issue, directed to the sheriff or coroner of any county, other than that in which the judgment upon which such writ may issue, may have been rendered, such sheriff shall not deliver the body or bodies of the person or persons thereby commanded to be taken, to the jail of the county from which such writ may issue; but such sheriff or coroner shall proceed to execute such writ, in all respects as if the same had issued out of the office of the clerk of the circuit court of the county of which such sheriff or coroner is an officer, making return of his proceedings thereon, to the court of which such writ may have emanated.

SEC. 18. That any person arrested by virtue of a writ of *capias ad satisfaciendum*, while in the hands of the officer making such arrest, or being actually imprisoned in jail on such

Or by taking in-
solvent oath.

Officer arresting
shall take pri-
soner before ju-
dicial officer to
make oath.

Oath to be given
to officer arrest-
ing.

Oath shall jus-
tify officer.
Notice of inten-
tion to take in-
solvent oath, to
be given to pl'ff.

Or be posted in
clerk's office.

Pris'nr may be
interrogated.

arrest, may discharge himself or herself from custody by delivering to the officer making such arrest, a sufficiency of property, either real or personal, to discharge the debt or damages due on such writ, together with the interest and costs due thereon, or by delivering to such officer, all the property, both real and personal, of which he or she may be possessed, and solemnly swearing that he or she has no more or other property, either real or personal, subject to execution, and that he or she has no moneys, rights, credits, or effects in his or her possession, or under his or her control, or in the possession or under the control of any other person or persons, for his or her use, and that he or she has neither directly nor indirectly disposed of, transferred, or concealed any of his or her property, rights, credits, moneys or effects, with intent to defraud his or her creditors, or by swearing in like manner, that he or she has no property subject to execution, either real or personal, and no rights, credits, moneys, or effects, in or under his or her possession or control, or in or under the possession or control of any other person or persons, for his or her use, and that he or she has not, either directly or indirectly, disposed of, transferred or concealed any of his or her property, rights, credits, moneys or effects, with intent to defraud his or her creditors. And for the purpose of enabling any person arrested upon a *capias ad satisfaciendum*, to take either of the oaths above in this section prescribed, it shall be the duty of the officer making such arrest, upon the request of the person arrested, to take him or her before some judge of the circuit or supreme court, or justice of the peace for the county within which such arrest may have been made, and such judge or justice shall have full power to administer such oath, reducing the same to writing, and fully explaining the same to the person taking the same, and causing the same to be signed by the person swearing thereto, which oath, so taken and signed, shall be delivered to the officer making said arrest, who shall make the same a part of his return, appending it to the writ by virtue of which he may have made said arrest, and such return shall be available for such office, in justifying the discharge of such arrested person from custody, if the same be true. And the execution plaintiff shall be entitled to written notice of the time and place at which, and of the officer before whom such oath will be taken, which notice shall be served upon such plaintiff, or his agent or attorney, by the officer making said arrest or his deputy, if such plaintiff or his agent or attorney reside in the county within which said arrest shall have been made, and if neither the plaintiff or his agent or attorney reside in such county, the said officer making said arrest shall post up such notice in the clerk's office of such county; and at the time and place when and where such oath shall be administered, such execution plaintiff or his agent or attorney may attend and propound to said arrested person, such questions respecting his property, moneys, rights, credits, and effects, as may be considered relevant and proper by the judge or justice administe-

ring said oath; and such judge or justice shall reduce such questions and the answers thereto, to writing, and file the same in the office of the clerk of the circuit court of the county in which such examination may have been had. And persons arrested on writs of *capias ad satisfaciendum*, availing themselves of the provisions of this act, and bringing themselves strictly within the same, shall be thereupon discharged from arrest, and from further imprisonment or arrest, on account of the judgment on which such writs of *capias ad satisfaciendum* may have been issued.

SEC. 19. That if any person or persons being a prisoner or prisoners, charged in execution on a writ of *capias ad satisfaciendum*, shall die, such arrest and the consequent imprisonment shall not operate as a satisfaction of the judgment upon which such writ of *capias ad satisfaciendum* may have issued, and the party at whose suit such person or persons may have been so arrested or charged in execution, may sue out a writ of execution against the estate of such deceased person, or prosecute any other legal remedy, for the recovery of the amount of such judgment, in the same manner as if such writ of *capias ad satisfaciendum* had never been issued or executed.

SEC. 20. That in the exercise of the privilege allowed by the provisions of the second section of this act, to execution debtors, in selecting property to be taken and sold on execution, it shall be the duty of such execution debtors, to make such selection in good time to enable the sheriff or other officer, to advertise and sell property of such execution, before the return day of execution then in the hands of such officer, and moreover to surrender on such execution, such portion of their estate as will be sufficient, in the opinion of such officer, to satisfy such execution, and on failure of such execution debtors to make such selection of the property, in the manner and time aforesaid, such officer shall proceed to levy upon and sell to satisfy such execution, such of the estate of such execution debtors as may be most readily found.

SEC. 21. That in all cases of collectors and other debtors to the state of Indiana, the real and personal estate of the debtors, shall be bound from the test of the process by which such debtor is to be summoned or arrested to answer the demand of the state; and in all cases where the estate of the debtor is insufficient to pay his debts, the state shall have preference, and its demands shall be first settled and satisfied out of such estate.

SEC. 22. That when any execution debtor may wish to discharge himself or herself from arrest or imprisonment, on a writ of *capias ad satisfaciendum*, by delivering property to the proper officer to satisfy the amount due on such writ, and shall so deliver such property to such officer, it shall be the duty of such officer to advertise and sell such property, on such writ of *capias ad satisfaciendum*, proceeding in all respects as if such property had been levied upon by virtue of an execution against the estate of such execution debtor, and such officer shall make return of his proceedings in the premises, according to the facts.

Answers to be
in writing.

Discharge.

Death of a pris'r
shall not be a sa-
tisfaction of the
judgment.

Remedy when
prisoner dies in
execution.

Debtor shall not
delay in select'g
property to be
sold on execut'n.

State shall have
preference of o-
ther creditors.

Prop'ty given up
to satisfy ca. sa.
how sold.

Replevy bonds, of property taken on execution, shall, when returned to the office of the clerk of the circuit court, be entered on the judgment docket of such clerk, and the date of such entry shall be noted; but the entering of security, by recognizance of record, for the payment of any judgment, and the replevying of an execution in the hands of an officer, and the giving of a bond for the delivery of property on execution, shall neither, nor all, operate as a satisfaction of the original judgment, upon which such proceedings shall or may be had, so as to extinguish the lien created by such original judgment, upon the estate of any judgment debtor.

SEC. 24. That no real estate of any testator or intestate, shall be subject to execution, upon any judgment against the executor or administrator of such testator or intestate, unless the heirs of such intestate, the devisees of such testator, and the *terre tenants* of such real estate, be first made parties to such judgment in the following manner, to-wit: When any judgment shall be obtained against an executor or administrator, to be levied of the goods and chattels of the deceased, and execution issued thereon shall remain unsatisfied, in whole or part, for want of personal estate, and there is real estate in the state of Indiana, it shall be lawful for the plaintiff in such judgment, to file in the proper court, where such judgment is obtained, a petition against the executor or administrator and heirs and devisees, if any, of the deceased, setting forth the facts of the judgment, and the want of personal property, and that there is real estate in the state of Indiana, describing the same, and setting forth in what county or counties such real estate is situate and lies, and praying said court to award the proper writ or writs of execution against the same; and the clerk of such court shall, upon filing such petition, notify the persons against whom it is filed, of the pendency thereof, requiring them to appear on the first day of the next term of said court, and shew cause if any they can, why the proper writ or writs of execution shall not be awarded; which said notice shall be given to residents by summons, served by the proper officer, and to non-residents, by publishing the same in the nearest newspaper, for four weeks successively. And if a summons shall be served on residents ten days before the sitting of the court, and be published as aforesaid, as to non-residents, the court shall at the first term, award the proper writ or writs of execution, directed to the proper officer of the proper county, unless good cause to the contrary be shewn; and the non-age of heirs or devisees, shall not in any case be good cause to suspend execution.

SEC. 25. That when default or defaults, shall be made or suffered, by any mortgager or mortgagers of lands, tenements or hereditaments, or by his, her or their heirs, devisees, executors, administrators or assigns, of, or in the payment of the mortgage money, or performance of the condition or conditions which they or any of them should have paid or performed or

ought to pay or perform, in such manner and form, and according to the tenor, purport and effect of the respective provisions, conditions or covenants comprised in the deeds of mortgage or defeasance, and at the days, times and places, in the same deeds respectively mentioned and conditioned, in any purchase; it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them who may hold the said deed of defeasance, and his, her or their heirs, executors, administrators or assigns, at any time after the expiration of the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to file his, her or their bill, in the proper circuit court, according to the course of the common law, praying such court to foreclose the equity of redemption of the mortgager or mortgagers, to such mortgaged premises; and the said court, having jurisdiction thereof, shall make such equitable decree in the premises, between the parties, as may be right and just; and the said mortgaged premises, if ordered to be sold by said court, shall be sold as other lands are sold on execution, to the highest bidder, at public vendue; and the sheriff selling the same, shall make a proper deed of conveyance to the purchaser or purchasers thereof, as in cases of other lands, when sold on execution; and when such lands, tenements or hereditaments, shall be sold as aforesaid, the person or persons to whom the same may be sold, shall and may hold and enjoy the same, with their appurtenances; and such estate or estates, shall be discharged from all equity or benefit of redemption, and all other incumbrances made or suffered by the mortgager or mortgagers, his, her or their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees and creditors, their heirs and assigns, shall hold and enjoy the same, free and discharged as aforesaid: but before such sale be made, notice thereof shall be given in manner and form as is herein above prescribed, concerning the sale of lands upon execution.

SEC. 26. That whenever any goods, chattels, lands, tenements or hereditaments, shall be sold on execution, by virtue of any of the provisions of this act, and the same shall sell for more than will satisfy such execution, and the interest and costs accruing thereon, the sheriff or other officer making sale of such property, shall render the overplus to the execution debtor or debtors; and then, and not before, such officer shall be discharged thereof, upon the record of the same court to which he shall make return of his proceedings concerning such sales.

SEC. 27. That no sale of property on execution, by virtue of the twenty-fifth section of this act, shall be construed to create any further term or estate in the vendees, mortgagees or creditors, to whom the same may be sold or delivered, than the estate so sold or delivered shall appear to have been mortgaged for, by the said respective mortgages or defeasible deeds.

SEC. 28. That if any estate shall be sold upon execution, issued under and in accordance with the provisions of this act,

For foreclosure, bill to be filed in c. court.

Decree.

Mortgaged premises how sold.

Conveyance.

Effect of foreclosure.

Notice of mortgage sale.

Overpl's of sales to be p'd to execution defend't

What estate is conveyed by sale of mortgaged premises.

Reversal of judgment shall not avoid sales bona fide.

upon any judgment or decree rendered by a court having jurisdiction of the matter of controversy, which may have resulted in such judgment, and such judgment or decree shall be afterwards reversed for error or errors, none of such estate so sold on execution, shall be restored in consequence of such reversal, nor shall the sale or delivery thereof be thereby avoided, but restitution shall in such case be made of the money or price for which such estate may have been sold: *Provided however*, that the provisions of this section shall only extend to *bona fide*, innocent purchasers, who are not parties to the record.

Proceedings vs. sheriff &c for failing to return executions.

SEC. 29. That any sheriff or other officer, into whose hands any execution may come, for the collection of any debt, damages or costs, and who shall neglect or fail to return the same, on or before the proper return day thereof, or to pay over the money collected on such execution, shall be liable to pay the full amount of the debt, damages, interest and costs, required by such execution to be collected, together with full costs and ten per cent. damage upon the amount so as aforesaid required to be collected by such execution; all which may be recovered on motion, made before the court out of which such execution may have emanated, ten days previous notice having been given of such intended motion; and for all which, such court is required to render judgment against such officer, unless he shew cause, satisfactory to such court, why such judgment ought not to be rendered against him, and upon such judgment, execution may issue, returnable in thirty days from the date thereof; or suit for such failure may be maintained against such officer and his securities, on his official bond, and judgment be had thereon, for the debt, damages, and costs above mentioned.

Remedy by motion. Notice to officer. Judgment.

Remedy by suit on official bond.

Return days of executions.

SEC. 30. The first juridical day of the first term in the year of each circuit court; and the ninetieth day thereafter, or if the same should fall on Sunday, then the Monday next following; also the first juridical day, of the last term in the year, of such circuit court, and the ninetieth day thereafter, or if the same should happen on Sunday, then the Monday next following, shall be return days for all writs of execution, which may issue from such court.

AN ACT to amend the act entitled "an act subjecting real and personal estate to execution," approved February 4, 1832.

[APPROVED FEBRUARY 2, 1833.]

Purchasers of property under execut'n refusing to pay the purchase money liable to judgment &c.

Be it enacted by the General Assembly of the state of Indiana, That whenever hereafter any property, real or personal, shall be sold by virtue of any execution, and the purchaser thereof shall neglect or refuse to pay the purchase money, such purchaser shall be liable, on motion by the officer making such sale, in any court having competent jurisdiction, three days notice of said motion having been given, to a judgment for the amount of such purchase money, and ten per centum thereon, together with the costs of said motion; and no stay of execution

shall be allowed on any such judgment: *Provided however*, that nothing herein contained, shall prevent the officer making such sale from re-exposing the same property to sale, on the same or a subsequent day; and if the amount of such second sale shall not be equal to the amount of said first sale and the costs of said second sale, said first purchaser shall be required to pay the deficiency, and be liable to a motion and judgment therefor in the manner as aforesaid. Proviso.

AN ACT to amend an act entitled "an act to subject real and personal estate to execution," approved February 4, 1831.

[APPROVED, FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be lawful for any execution debtor, who is entitled to claim certain property as exempt from execution according to the provisions of the act to which this is an amendment, to claim, in addition thereto, six sheep and the wool thereof, and one additional bed and bedding, as exempt from execution; and the officer having the execution shall in all respects be governed, in relation thereto, by the law to which this is an amendment. Additional articles exempt from execution.

SEC. 2. When it may so happen, that the execution debtor may be destitute of any or of all the specific articles exempted by this act or the act to which this is an amendment, it shall be lawful for such debtor to claim, as exempt from execution, any other article or articles, of which he or she may be possessed, to be selected by such debtor, to the value of the article or articles, in whole or in part, of which such debtor may be destitute, so that the value thereof in the whole shall not exceed fifty dollars. Other articles may be selected where debtor is destitute of those exempted.

SEC. 3. This act to take effect and be in force from and after its publication.

CHAPTER XL.

AN ACT regulating the Fees and Salaries of the several Officers and Persons therein named.

[APPROVED FEBRUARY 7, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the officers and persons herein mentioned, shall be entitled to receive for their services, the fees hereby allowed and no other:

Clerk's Fees in the Supreme Court.

Clerk of Su. preme court.	Every writ of error and seal	- - -	\$00 75
	Every summons thereon	- - -	50
	Endorsing on writ of error that it is to operate as a supersedeas	- - -	06
	Endorsing same on summons	- - -	06
	A bond given by the plaintiff when not a freeholder and resident of the state	- - -	37 1-2
	Filing writ and each paper in a cause	- - -	06
	Copy of a record or other paper, per sheet of 100 words	- - -	12 1-2
	Discontinuance or retraxit	- - -	12 1-2
	Copy of every rule when required	- - -	12 1-2
	Bringing a particular record into court	- - -	25
	Entering satisfaction of record	- - -	12 1-2
	Receiving and entering verdict	- - -	12 1-2
	An execution	- - -	50
	Entering defendant's appearance	- - -	06
	Entering on docket	- - -	12 1-2
	Entering judgment	- - -	15
	Subpoena, to include all the witnesses that may be called for at any one time	- - -	50
	Swearing each witness, constable or bailiff	- - -	06
	Making up and entering a complete record after judgment, per sheet of 100 words	- - -	12 1-2
	Searching the record within one year	- - -	12 1-2
	Every year back	- - -	06
	On confession of error, judgment or default	- - -	25
	Continuing cause	- - -	20
	Every issue joined	- - -	25
	Issuing commissions to take depositions	- - -	50
	Enter any principal motion	- - -	10
	Every writ of supersedeas, or certiorari and seal	- - -	75
	Certificate and seal	- - -	50
	For a bond on a supersedeas	- - -	75
	Making out advertisement for non-resident defend- ant in error	- - -	50
	Issuing an attachment for contempt	- - -	50
	Every writ of elegit, venditioni exponas and other special writs not provided for	- - -	50
	Every hundred words contained in any bond, writ, obligation, or other writing, required by law to be done by him, and for which there is no spe- cific allowance	- - -	12 1-2
	For recording deeds or other writings when requi- red, per 100 words	- - -	12 1-2

Clerk's Fees in the Circuit Court, in Civil Causes.

CPks of circuit	Every writ of capias and seal	- - -	\$00 50
ct in civil cases.	Entering action	- - -	06

A bond given by the plaintiff when not a freehold- er and resident of the state	- - -	\$00 18 3-4
Filing declaration, or other pleadings	- - -	06 1-4
Copy of declaration or other pleadings when requi- red, for each sheet of 100 words	- - -	12 1-2
Entering any motion and rule thereon	- - -	12 1-2
Discontinuance or retraxit	- - -	12 1-2
Copy of every rule when required	- - -	12 1-2
Bringing a particular record into court	- - -	12 1-2
Entering satisfaction of record	- - -	12 1-2
Receiving and entering verdict	- - -	15
Entering judgment	- - -	50
An execution	- - -	-
Transcript of record in error, on appeal, and re- turning it with the writ, per sheet of 100 words	- - -	12 1-2
Entering defendant's appearance	- - -	06
Every writ of inquiry per sheet of 100 words	- - -	12 1-2
Entering on docket	- - -	12 1-2
Receiving and entering the traverse panel and swearing the jury	- - -	12 1-2
For entering fees on fee docket (except his own) per 100 words	- - -	12 1-2
A subpoena to include all the witnesses that may be called for at one time	- - -	50
All other writs not herein provided for	- - -	50
Swearing each witness, constable or bailiff	- - -	06
Filing each document not otherwise provided for	- - -	06
Making up and entering a complete record after judgment, per sheet 100 words	- - -	12 1-2
Copy of a record when required, per sheet of 100 words	- - -	12 1-2
Searching the record within one year	- - -	12 1-2
Every year back	- - -	06
Entering report of referees, per sheet of 100 words	- - -	12 1-2
Entering rule of court and appointing referees	- - -	15
Continuing each cause	- - -	20
On surrendering the principal in court by sure- ties	- - -	15
Entering each principal motion	- - -	10
Every issue joined	- - -	25
On drawing special list of jury attending, striking and making copies of jury list for plaintiff or defendant	- - -	50
Making out advertisement for a non-resident de- fendant in chancery, or on libel for divorce	- - -	50
Issuing commission to take depositions	- - -	50
For a marriage license, and recording a certificate of marriage	- - -	1 00
Recording a certificate of an estray and advertising same on court house door	- - -	50
Every writ of ad quod damnum	- - -	1 00
Sealing weights and measures each	- - -	12 1-2

Each writ of subpoena in chancery and writ of injunction	\$00 50
Copy of writ of subpoena	37 1-2
Issuing an attachment for contempt under the seal of the court	50
Every writ of eligit and other special writ not provided for	50
For copy of a judgment to operate as a lien on real estate in another county	50
For filing and recording such copy	50
For every writ of venditioni exponas and scire facias	50
And for every 100 words of the record transcribed in such writs	12 1-2
For recording certificate of marriage when no license has been granted	50
Summons in lieu of capias	50
Tavern license and bond	1 00
License to retail spiritous liquors and bond	1 00
For examining every account in court	10
Entering a writ of error, or certiorari from the supreme court	12 1-2
Every trial	25
Certificate and seal	50
Reading and entering each order	10
Every bond, writ, obligation or other writing required by law, for which there is no specific allowance, per every 100 words	12 1-2
<i>Provided That where any nolle prosequi or discontinuance is entered by a prosecuting attorney, or by the plaintiff in any action, or where a nonsuit is suffered, it shall not be necessary to make a record of the same.</i>	

Proviso as to
discontinuance.

Clerk's Fees in Criminal Proceedings.

Clerks in criminal cases.	Taking a recognizance and drawing it up in form	37 1-2
	Subpoena to include all the witnesses that may be called for at one time	50
	A special venire or other writ (except a general venire)	50
	Entering defendant's appearance	06
	An execution	50
	Making up record per sheet of 100 words	18 3-4
	Copy of record when required per sheet of 100 words	12 1-2
	Every order or rule of court	09
	Filing record	12 1-2
	Entering the panel and swearing the jury	25
	Swearing each witness and constable	06
	Reading order, summons or petition in court	06
	Taking and entering the verdict	12 1-2
	Entering the defendant's confession	15

Copies of indictments and pleadings if required, per sheet of 100 words	12 1-2
Discharging a recognizance	10

Probate Fees.

For all copies per sheet of 100 words	12 1-2	Clerk's fees in probate court.
For administering an oath	06	
For filing	06	
For a citation	50	
For letters of administration and recording and filing the same	1 50	
For taking and filing a renunciation and taking proof thereof	50	
For proving a will and endorsing a certificate thereon	50	
For qualifying administrator, taking bond, and writing certificate	1 00	
For filing caveat	12 1-2	
For proving codicil, if proved separately, endorsing certificate, recording and filing the same	1 00	
For recording and examining an inventory or account per sheet of 100 words	12 1-2	
For granting administration with the will annexed	1 50	
For settlement of accounts of executor or administrator	50	
For every copy of said account not exceeding 100 items with the certificate and seal	75	
Reading and filing petition to sell land, and swearing the administrator to the truth of the statement made, and entering the necessary orders thereon, per 100 words	12 1-2	
Giving notice by order of the court for sale of land, for every advertisement not exceeding three	25	
For entering up an order for the appraisers of decedent's estate	12 1-2	
For recording will, per sheet of 100 words	12 1-2	

Sheriff's Fees.

For serving a writ and taking into custody	50	Sheriff's fees.
For every mile in going to serve process	06	
For taking bail	25	
For taking a recognizance and drawing it up in form	37 1-2	
For returning every writ	10	
For summoning a jury	75	
For attending a review per day	1 00	
For going to and returning from do.	1 00	
For serving and returning a scire facias	37 1-2	
For serving a writ of possession with the aid of the posse comitatus	2 50	

For serving such writ without the aid of the posse comitatus	1 25
For calling a jury in each cause	12 1-2
For every person committed to the common jail	37 1-2
For calling every witness	06
For discharging every person out of the common jail	37 1-2
For holding an inquisition, drawing up and returning the same	1 50
For serving a summons	37 1-2
For attending a prisoner before a judge when surrendered by his bail, and receiving the prisoner into custody	50
For detaining a prisoner per day	31 1-4
For selling property on an execution, a commission of five per centum on the first \$300, and two per centum on all sums above that amount; but when the money is paid without sale, one half of those commissions, only, shall be allowed.	
For taking a valuation of lands	75
For taking a replevy bond	75
For serving a ca. sa.	1 00
For levying on property and advertising the same, without sale	1 00
Mileage as above, when no money is made, and no other fee or reward shall be allowed on executions, except for the expense of keeping property.	
For serving distress warrant	50
For making a deed on sales of real estate on execution	2 00
Serving a foreign or domestic attachment	50
Returning do	25
For postage paid on letters received from or directed to, the clerk of the supreme court enveloping process issued by said court, the amount thereof, to be returned as an item of charge.	
In criminal cases not provided for, the like fees as for services in civil cases.	
For collecting fee bill six per centum on the amount thereof.	
To the sheriff for taking a prisoner to another county for trial or safe keeping, such fee as the board doing county business shall think reasonable and just, to be paid by the county to which such prisoner is taken.	
For taking convict to state prison and all expenses incident to the same, per mile	\$00 25
For each additional one taken at the same time per mile, to be paid out of the state treasury	12 1-2

For taking a prisoner to another county for safe keeping, or for trial on a change of venue granted by the legislature, such fee as the board doing county business in the county whence the prisoner was taken may in their discretion allow, out of the funds of said county.

Juror's Fees.

Every juror shall receive for his services in the circuit or probate courts, to be paid by the county, per day	\$00 75	Juror's fees.
In each cause tried by jury, the clerk shall tax, against the losing party, to be collected and paid into the country treasury by the sheriff	4 50	
Every juror attending trial before a justice	25	
Every grand juror sworn, for his services as such, to be paid by the county, per day	75	
Every juror sworn in each action in the supreme court, to be taxed against the party failing in the suit	37 1-2	

Witnesses' Fees in the Supreme and Circuit Courts.

To every witness attending in his own county on trial, per day	\$00 50	Witness' fees in supreme and circuit courts.
To every witness attending from another county and going and returning, each day	1 00	
To each witness, subpoenaed in the county, and detained from another county each day	1 00	

Witnesses' Fees before a Justice.

Attending per day	\$00 25
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Prosecuting Attorneys' Fees.

For every conviction upon an indictment or presentment, on a plea of not guilty	\$5 00	Prosecuting attorneys.
For every conviction upon an indictment or presentment, on a plea of guilty	\$2 50	
On each application for divorce where the same is not granted, to be paid by the applicant	3 00	

Coroner's Fees.

Empannelling and swearing a jury and witnesses, and making and returning inquisition for the view of each body	\$5 00	Coroner's fees.
The fees of an inquest to be certified by the coroner and paid out of the county treasury.		

NOTE.—For jurors' fees see local acts of 1838, page 442, the last resolve of a joint resolution relative to duties of the Secretary of State.

For all duties he shall perform when acting as sheriff, the same fees as are allowed to sheriffs in similar cases.

Recorder's Fees.

Recorder's fees.	For recording a deed or mortgage	-	\$1 00
	Recording a bond	-	50
	Recording a promissory note	-	25
	Recording all other instruments, per sheet of 100 words	-	12 1-2
	Copies of all records and certifying the same per sheet of 100 words	-	12 1-2
	Recording town plats and additions thereto for every 100 lots and under	-	2 00
	Every lot over one hundred, each	-	01
	For recording mortgage to superintendent of loan office	-	50

Fees of the Secretary of State.

Secretary of state.	For copies of records and papers per sheet of 100 words	-	\$00 12 1-2
	For every certificate and seal	-	50

Attorneys' Fees in Circuit Courts.

Attorneys in the circuit court.	In all civil actions at law, where the title of land does not come in question, to be taxed with costs, in favor of the party gaining the suit	-	2 50
	In all civil actions where the title of land shall come in question, and in suits in chancery, to be taxed with the costs in favor of the party gaining the suit	-	5 00

Attorneys and Counsellors' Fees in the Supreme Court.

Attorneys in the supreme court.	For every appearance to a cause on appeal or writ of error, to be taxed with the costs in favor of the party gaining the suit	-	\$10 00.
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Surveyor's Fees.

Surveyor's fees.	When their services are ordered by a court of record or performed in cases where the law makes it necessary to employ a county surveyor.	-	-
	For going to and returning from a view per day, and for every thirty miles going to and returning from the same	-	\$1 25
	For his actual service on the view per day	-	1 50
	For going to, attending court and returning, per day	-	1 25
	For every survey by him plainly bounded, as the law directs, and for a plat of such survey, after	-	-

	the delivery of such plat, where the survey shall not exceed four hundred acres	-	3 00
	For every hundred acres of land contained in one survey, above four hundred acres	-	25
	For surveying a lot in town	-	1 00
	For every additional lot surveyed at the same time	-	25
	For a survey began by him, which he is stopped or hindered from finishing, to be paid by the party requiring the survey	-	2 62
	For running a dividing line one mile or under	-	1 25
	And all division lines which may be run to divide any of the lands sold by the United States, shall be made agreeably to the laws of the United States directing the mode of surveying the public lands.	-	-
	For surveying an acre of land or less quantity for a mill or any other purpose	-	1 50
	For every survey of land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed; and where a survey shall be made of any lands, which are to be added to other lands, in an inclusive patent, the surveyor shall not be paid a second fee, for the land first surveyed, but shall only receive what the survey of the additional land shall amount to. And where any surveys shall have been actually made of several parcels of lands adjoining, and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out such for	-	1 50
	For running a dividing line between any counties or townships, to be paid by such counties or townships, in proportion to the number of taxable inhabitants, \$1 00 per mile.	-	-
	For receiving a warrant of survey and giving a receipt therefor	-	\$00 18 3-4
	For a copy of a plat of land or a certificate of survey	-	25

Fees of Justices of the Peace.

	For every investigation of a criminal information on oath	-	50
	Swearing each witness	-	06 1-4
	For every warrant or other process in a criminal case	-	25
	For every bond or recognizance	-	25
	Every precept for forcible entry and detainer	-	25
	Every trial for forcible entry and detainer	-	2 50
	Writing and signing every attachment	-	25
	Taking an acknowledgement of a deed or a power of attorney	-	25
	Order for relieving a pauper	-	25

Justices of the peace.

Order for removing a pauper	-	50
Issuing a scire facias	-	25
Certifying description of a boat adrift, or estray	-	25
Warrant and certificate of appraisement	-	25
Taking and certifying depositions	-	25
And for each hundred words therein contained more than 100	-	12 1-2
For each process required by law in civil cases, and not herein enumerated	-	12 1-2
For every writing or record not herein provided for, every 100 words	-	12 1-2
Every trial and entry of judgment	-	25
Entering judgment by default or confessed	-	12 1-2
For certifying copies of all proceedings, for each 100 words	-	12 1-2
Entering each rule of reference or continuance	-	12 1-2
Every bond or recognizance of bail	-	25
Every dedimus	-	25
Every precept for summoning jury	-	12 1-2
Entering verdict of such jury	-	12 1-2
Each transfer of judgment	-	12 1-2
Issuing an execution	-	12 1-2
Subpœna for witnesses to include all that are called for at one time	-	25 1-2
For administering each oath required by law, and not herein enumerated	-	06 1-4
For attending the examination of insolvent debtor, each justice	-	25
For issuing each writ to sheriff or jailer to bring insolvent person before him, each	-	12 1-2
For making order for discharge, each	-	12 1-2
For trial of right of property and judgment	-	25
For swearing jury	-	25

Constable's Fees in Civil Cases.

Constable's fees in civil cases.	For serving a summons or warrant on each person named therein	-	25
	Travelling to serve process per mile	-	04
	Where two or more are named in such process, mileage shall be allowed to the place of actual service, the most remote from the place where such process is returnable.		
	A copy of the process left at the defendant's residence	-	12 1-2
	Serving a subpœna, for each person therein named	-	12 1-2
	Returning each warrant, summons and scire facias	-	05
	Bail bond	-	25
	Serving execution and mileage, as above	-	25
	Commitment to prison	-	25
	Sale of goods when the amount does not exceed six dollars	-	25
	On all sums above six dollars 5 per centum.		

On all moneys collected on execution without sale half the above commissions.	-	10
Returning execution	-	25
For summoning jury in any case	-	12 1-2
Attending jury trial before justice	-	

Constable's Fees in Criminal Cases.

For serving a capias on each person named therein	\$00 50	Constable's fees in criminal cases.
For serving a subpœna	- 20	
Travelling to serve process, per mile	- 04	
Attending an examination of a person charged with a crime	- 20	
If more than one, an addition for each	- 05	
Commitment of each person	- 25	

SEC. 4. The secretary, assistant and enrolling clerk of the senate, and the clerk, assistant and enrolling clerk of the house of representatives, shall each be allowed the sum of three dollars and fifty cents per day; which shall be certified by the president of the senate for the secretaries, and by the speaker of the house of representatives for the clerks, and be audited by the auditor of public accounts, and paid out of the treasury.

SEC. 5. The door-keeper of the senate and of the house of representatives, shall each be allowed the sum of two dollars and twenty-five cents per day, to be certified by the president of the senate and speaker of the house of representatives respectively, audited by the auditor of public accounts, and paid out of the treasury.

SEC. 6. The clerks of the supreme and circuit courts, shall set up in some public place in their offices, and there constantly keep a fair table of their fees, on a pain of forfeiting forty dollars for every court day the same shall be missing through their neglect; which penalty shall be to the use of the person who shall inform or sue for the same, and may be recovered in the circuit court, by action of debt or indictment.

SEC. 7. Any officer who shall claim, demand, or take any more or greater fees for any services by him done, within the purview of this act, than herein before allowed, shall forfeit and pay to the party injured, besides such fee or fees, treble the value of the sum extorted for every particular fee so unjustly charged, demanded or taken, to be recovered with costs in any court having cognizance thereof, by action of debt; provided the same be sued for within two years after the offence shall be committed.

SEC. 8. Recorders and county surveyors, may at any time after their fees shall become due make out their fee bills, stating each item particularly, which shall be signed by said re-

NOTE.—Sections 2 and 3 are repealed. See act of 1837, relative to salaries of Governor, &c., published in this chapter.

Cl'ks of supr. cir. & probate courts may issue fees bills.

How fee bill shall be served.

Justice's fee bill, how collected.

Witnesses' fees, when to be claimed.

Sh'ff's and coroner's fees to be endorsed, &c. Cl'ks to keep fee books. Fee bill may be issued from fee book for predecessor.

Fees standing 3 y'r's how collected.

Suits on fee bills prohibited.

corder or surveyor; and all bills of fees in the supreme, circuit or probate courts shall be drawn up at full length in the same manner that fees are allowed in this law, particularly stating each item and to whom due, which shall be certified by said clerks, and sealed with the seal of the proper court in which the fees accrued, which shall have the force and effects of writs of fieri facias, for which fee bill and seal no fee shall be allowed; and the sheriff or coroner to whom such fee bill shall be directed and delivered, shall at the time he serves the same deliver a copy thereof if requested, to the person chargeable therewith, and proceed to collect and return said bills, in the same manner that executions are collectable and returnable.

SEC. 10. When a cause shall be decided or be dismissed by the plaintiff, or when the stay allowed by law, on judgments before justices of the peace, shall have expired, it shall be lawful for such justice to issue his fee bill, and place the same in the hands of the constable of his county to be collected and paid over in the same manner as is provided for the collection of other fees; but no charge or demand shall be made by any officer, for making out a fee bill or copy thereof.

SEC. 11. Witnesses shall claim their fees at each term as they attend and not afterwards; and the clerks shall take down said fees at the time they are claimed, and the sheriffs and coroners are hereby required to endorse upon all process served by them their fees at full length; and all clerks shall, in a book to be kept for that purpose, enter all fees as the services are rendered, and the clerk of the supreme or of any circuit or probate court, shall have the same power to issue fee bills from the book aforesaid and the papers on file in his office, for services rendered, by any person in said court before his official term of service, and in the same manner that any of his predecessors could have done had they continued in office.

SEC. 12. After three years from the termination of any suit in which services have been rendered, no fee bill shall issue for such services until the party claiming the same shall give five days notice in writing to the party charged, to appear before the court in which the fees accrued, or a judge thereof in vacation, or a master in chancery, or a justice of the peace, as the case may be, and shew cause against the issuing thereof, and then if no sufficient cause to the contrary be shew, the court, judge or master in chancery or justice of the peace, as the case may be, shall order the said fee bill to issue.

SEC. 13. No action shall be had or maintained on any fee bill due or owing to any of the persons aforesaid, so long as the party owing shall reside within the jurisdiction of the court issuing the same.

NOTE.—Ninth section repealed.

SEC. 14. The same proceedings shall be had against the person or persons, who may by bond become security for costs for any other person or persons, as herein provided against the principal. Surety for costs liable as principal.

SEC. 15. The said sheriff or coroner, and their securities, for a neglect of duty in collecting or returning said fee bills, shall be liable to the same penalties, and in the same manner as for a neglect of duty in collecting or returning executions. Remedy vs. of fieri failing to collect or return fee bills.

SEC. 16. The executors or administrators of such sheriff or coroner, shall be liable to a judgment, for fee bills received to be collected by their testator or intestate, and not accounted for, as far as assets may be found. Liability of rep. of dec. sh'ff as to fee bills.

SEC. 17. No officer shall issue a second fee bill containing charges for the same services, embraced in any fee bills previously issued, unless the one first issued, has been returned not satisfied, or proof filed, that such return would be true. Second fee bill, when to issue.

SEC. 18. The clerk of the supreme court shall not hereafter make out or charge for a copy of a record, unless requested so to do by one or other of the parties. Cl'k of sup. c't shall not copy a record unless requested, &c.

SEC. 19. If the sheriff or coroner shall be sued for any thing by him done in pursuance of this act, he may plead the general issue and give this act in evidence. Sh'ff &c. sued may plead gen. issue.

SEC. 20. That each circuit court, or a judge thereof in vacation, or a master in chancery, or justice of the peace, as the case may be, if a question arise concerning any bill of costs, or the person charged therewith shall alledge payment thereof, shall upon any motion of any party interested therein, and reasonable notice thereof, determine, according to the rights of the parties thereto, and make order accordingly; and whenever there shall appear a claim for official services rendered by any officer of a court of justice, and there does not appear to be any fee fixed by law as a compensation therefor, the court on application, shall make order specifically fixing the allowance for such claim, having due regard to the comparative value of such service; and all such cases, the president of the several judicial circuits shall report to the next general assembly. Items in cost bills, how contested. When c't may allow for official services.

SEC. 21. All fees to witnesses, and others, shall be considered due when the services are rendered, and fee bills may issue at any time after the fees are taxed. Fees when to be due.

AN ACT to amend an act entitled "an act regulating the Fees and Salaries of the several officers and persons therein named," approved Feb. 7, 1831.

[APPROVED FEBRUARY 1, 1834.]

Clerks of supreme court.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the clerks of the supreme court for services rendered on behalf of the state, in any criminal cause in said court, shall be allowed therefor the same fees as are now allowed by law for similar services in civil cases: and the said fees shall be taxed by one of the judges of said court, and be certified by him to be correct, which fees, when thus taxed and certified and presented to the auditor of public accounts, shall be audited, and upon the warrant of said auditor to be issued therefor, shall be paid out of the state treasury.

SEC. 2. The clerk of the supreme court shall be allowed in addition to the fees now taxable, as follows:

For each trial	\$0 25
For endorsing on supersedeas or writ of error, directions to the clerk of the inferior court	25
For docketing judgment	12 1-2

Clerks of circuit court.

SEC. 3. The clerks of the circuit court, in criminal cases where the defendant is convicted, shall be allowed the same fees for services rendered as are now allowed for like services in civil cases.

SEC. 4. For each license or permit to venders of foreign merchandize, grocery keepers, tavern keepers, showmen, and venders of clocks, the clerks issuing the same shall be allowed

For taking bail for the stay of execution on any judgment in the circuit court, the clerk thereof shall be allowed	25
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Fees, how collected.

SEC. 5. The fees herein allowed, may be collected by the officers entitled to the same, in like manner as is provided by the act of which this is amendatory; and the said officers in the charging and collecting of said fees, shall be subject to the same restrictions and responsibilities as are enjoined by said act.

AN ACT concerning Costs and Fees in criminal cases.

[APPROVED JANUARY 10, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That in all criminal prosecutions for any capital or inferior offence, where the person or persons accused shall be acquitted, no costs or fees shall be charged or taxed against said person or persons for any services rendered in said prosecution by any clerk, sheriff, coroner, justice of the peace, constable or witness.

This act to take effect and be in force from and after its publication.

AN ACT to amend an act entitled "an act organizing Circuit Courts and defining their powers and duties," and for other purposes.

[APPROVED FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the associate judges of the circuit courts of this state shall receive for their services two dollars per day for each day they may be engaged in the discharge of the duties imposed upon them by law to be paid by the respective counties in which they reside, upon the order of the board doing county business.

Compensation to associate judges.

AN ACT to amend an act entitled "an act to provide for the commissioning of Sheriffs and Coroners, and regulating their duties," approved February 7, 1824.

[APPROVED FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That in all cases hereafter, when jurors are empannelled by any coroner or other officer, for the purpose of holding an inquisition under the provisions of the act to which this is an amendment, each juror so empannelled and sworn to serve as such, shall be entitled to receive the sum of fifty cents, to be paid as hereinafter directed, for each and every day he shall be empannelled and serve as such juror.

Fees allowed to jurors of inquisition.

SEC. 2. That the said coroner or other officer who may summon and empannel said jurors for the purposes mentioned in the first section of this act, shall officially make and sign under his hand and seal, a certificate for each juror, either jointly or separately as convenience may require, and at the request of such juror or jurors, deliver the same to him or them, specifying in such certificate the number of days each, such juror may have served, and the amount thereof when presented to the treasurer of the proper county, shall be by him paid to such juror or jurors out of any money in such county treasury, not otherwise appropriated.

Coroner &c. to give certificate.

SEC. 3. This act to take effect and be in force from and after its publication.

AN ACT to amend an act entitled "an act regulating the fees and salaries of the several officers and persons therein named," approved February 7, 1831.

[APPROVED, FEBRUARY 3, 1837.]

Be it enacted by the General Assembly of the state of Indiana, That the clerk of the supreme court of this state shall hereafter receive as a part of the fees of his office, for every copy of a record, and for making up and entering a complete record after judgment, for every one hundred words therein contained, eighteen and three-fourth cents, and for every fee bill issued by him, twenty-five cents; so much of the act to

Fees of clerk of supreme court.

which this is an amendment as contravenes the provisions of this act, be, and the same is hereby repealed.

This act to be in force from and after its passage.

AN ACT to increase the compensation of the Governor of the state and other officers.

[APPROVED JANUARY 21, 1837.]

Compensation
of Governor.

Judges of sup. c.
Circuit court,
Members of gen.
assembly.

When to take
effect.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the following officers of government be and they are hereby allowed annually the following salaries, to wit: the governor fifteen hundred dollars; the judges of the supreme court fifteen hundred dollars each; the presidents of the circuit courts one thousand dollars each; and the members of the general assembly three dollars per day each, during their attendance on the same, and three dollars for every twenty-five miles they shall severally travel, on the most usual road in going to and returning from the general assembly.

SEC. 2. That this act shall be in force as follows, to wit: that part of it which relates to the salary of the governor from and after the expiration of the term of the present incumbent; that part of it which relates to the compensation of judges of the supreme court, and president of the circuit courts, from and after its passage; and that part of it which relates to the pay of the members of the general assembly from and after the first Monday of August next.

CHAPTER XLI.

AN ACT to establish and regulate Ferries.

[APPROVED FEBRUARY 10, 1831.]

City b'nds shall
establish ferries

Ferries not to be
nearer each other
than one mile

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the several boards doing county business, shall be, and they are hereby empowered to establish public ferries across those rivers or creeks bounding or within their respective counties, whenever they shall deem it necessary, on due application to them made; but no such ferry shall be established, unless the person making such application, be the proprietor of the land on that side of such river or creek, on which he wishes to have such ferry established; or where the owner or holder of any land where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time: *Provided*, that no ferry shall be established within one mile immediately below or above a regularly established ferry, unless they shall deem it important for the public convenience, or where the situation of a town or village, the crossing of a public high-

way or the intervention of some creek or ravine should render it necessary.

SEC. 2. When any river or creek shall be the boundary line between two counties, and any person owning lands on either side of the said river or creek, shall wish to have a public ferry across the same, he or she shall apply to the board doing county business for the county in which his or her land lies, who are hereby authorized to establish such ferry from the land of such applicant to the opposite side: and when any person being the owner or holder of any land, lying on any river or creek within or bounding on this state, where any public road may cross the same, and where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time, it shall be lawful for the board doing county business for the county in which it may be necessary to have such ferry established, upon proper application being made, and after having given three months public notice of their intention, by advertisement in some public newspaper in the county, or by written notices set up in three of the most public places in the county to grant a license to some person to keep a ferry at such place, on such conditions as to them may appear reasonable and just, taking bond and security as hereinafter provided: and any person having obtained a license from the board as aforesaid, shall be, and they are hereby authorized and empowered to keep such ferry so established, and also to occupy as much ground as may be necessary to discharge passengers, not exceeding one hundred rods on each side of the creek or river, as the ferryman may deem sufficient and necessary; but shall not be permitted to remove or disturb any boat lying at shore ten rods or more from the regular landing: *Provided*, that the owner of the land where such ferry may have been established, may demand and take possession of any such ferry, on his or her tendering to the holder of such ferry, the full value of all the boats and other craft which may have been necessarily employed for the transportation of passengers, with all other expenses that may have accrued in digging the banks or otherwise improving the ferry, and ten per centum thereon, giving also to the board doing county business a bond with security as hereinafter described; which bond shall be a complete release from the obligations contained in the bond previously given by the holder of such ferry.

SEC. 3. Where the land bordering on any creek or river, across which a public ferry is deemed necessary, shall be a public common for any town, the said board shall be authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common, under the rules and restrictions that ferries are established to persons owning land bordering on such river or creek: *Provided*, that the foregoing provision shall not be so construed as in anywise to affect any town or corporation, or the right of any person or persons, proprietor or proprietors of any town, their

How established
on watercourses
dividing co's.

Persons entitled
neglecting to ap-
ply, others may
have ferries.

Notice of appli-
cation.

Quantity of
ground occupied

Terms upon
which owner of
ground may af-
terwards claim
ferry.

How granted
where land ad-
joining is a com-
mon.

Proviso in favor
of towns and
proprietors of
towns.

heirs or assigns, by giving the right of establishing a ferry or ferries to any person or persons who are not proprietors of the land on the margin of the river or creek, if the corporation of such town, or the proprietor or proprietors of such land, keep up a sufficient number of ferries across such river or creek.

Notice of appli-
cat'n how prov'd

SEC. 4. The board doing county business shall not establish any ferry, until the applicant shall prove satisfactorily, that written notices of his intended application, have been set up in three of the most public places in the township, at least thirty days.

Co. b'rds shall
order kind of
boats & number
of hands.

SEC. 5. The board doing county business for the county wherein a ferry is established, shall have authority to order and direct from time to time, what boat or boats, and the number of hands which shall be kept at each ferry respectively; and the owner of the land whereon such ferry is established, or the applicant to whom the ferry is granted, shall within three months from the establishment thereof, execute a bond payable to the state of Indiana, with one or more securities, to be approved by the board, in the penal sum of five hundred dollars, conditioned that he or she will keep such ferry, or cause the same to be kept according to law; and that he or she will give passage to all public messengers and expressmen when required, without fee or reward whenever required; which bond shall be filed with the clerk of the county, to be proceeded on in the same manner as other public bonds, for any breach of the condition thereof; and if any person shall neglect or refuse to give such bond, he or she shall forfeit his or her right to said ferry.

Bond of ferry
keeper.

It'd to be filed &
remedy thereon

Expresses, &c.
to pass free.

SEC. 6. All expresses sent on public service, by a commander in chief, colonel or major to the governor for the time being, or commanding officer of the militia, shall be accounted public messengers and expressmen, and shall pass all ferries free of charge within the condition of the bond aforesaid, if the despatch carried by such express be endorsed public service, and signed by the person sending the same: *Provided*, no ferryman shall be bound to give passage free, to any such express in time of peace.

Sufficient boats
and hands to be
kept.

Hours of atten-
dance.

Boats be impr'ved

SEC. 7. Each and every licensed ferry keeper, shall constantly keep a good and sufficient boat, or boats if more than one be necessary, with a sufficient number of able and skillful ferrymen, as may be directed and required by the board doing county business, and give due attendance to the said ferry or ferries, and to the transportation of all persons with his or her property, who shall apply for the same, from daylight in the morning until dark in the evening, so that no unnecessary delay may happen to persons having occasion to pass said ferry: and all licensed ferry keepers shall be obliged, at any hour of the night if required, except in cases of evident danger, to give passage to all expresses above recited, and to all other persons requiring the same, on their tendering and paying double the rate of ferriage allowed to be taken during the day time; and it shall be the duty of all ferry keepers within this state, to cause

the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse and loaded wagons.

SEC. 8. Each and every licensed ferry keeper, shall annually pay for such privilege, not less than two and not above ten dollars, for the use of the county, to be assessed and collected pursuant to the provisions of the "act for assessing and collecting the revenue:" *Provided however*, that the boards doing county business, may in their discretion and under the restrictions hereinbefore prescribed, establish and license ferries over streams that are otherwise impassable only for short periods in particular seasons, without any tax or fee, if the board shall be satisfied that the profits of such ferry will not justify the owner in paying a tax therefor: but every ferry so established, under the provisions of this section, shall be subject to all the rules, regulations and restrictions herein prescribed for regulating ferries, except so far as relates to the payment of a ferry tax.

Ferry tax.

No tax.

SEC. 9. For the encouragement of ferry keepers, and in consideration of setting over public messengers and expressmen exempted from ferriage by this act, all men while necessarily employed in attending on licensed ferries in this state, shall be free from militia duty except in times of war or public danger; from working on roads and highways so far as personal service is required, and from serving on juries; and if any person or persons other than ferry keepers, licensed under the provisions of this act, shall for fee or reward or any expectation or promise thereof, set any person over any river or creek whereon public ferries are established, or shall hire to any person or persons, a boat to be used in ferrying at any place within two miles of such public ferry, he, she or they so offending, shall forfeit the sum of three dollars for every such offence, to be recovered before any justice of the peace for the county wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this state, and likewise be subject to be taxed by the board doing county business, in the same manner as regularly licensed ferry keepers.

Ferry keepers
exempt from mi-
litia duty, &c.

Penalty for in-
fracting ferry
privileges.

SEC. 10. The rates of ferriage shall be fixed by the board doing county business, at the time of licensing the ferry, and from time to time thereafter as they shall think proper.

Rates of ferriage

SEC. 11. If any ferry or ferries which now are or may hereafter be established, shall not be furnished with the necessary boat or boats, and ferrymen within six months after the establishment thereof, or if the proprietor shall at any time thereafter, wilfully neglect to attend to the same, it shall and may be lawful for the board doing county business for the county wherein such ferry or ferries may be situate, on complaint to them made, to cause the proprietor or proprietors of such ferry, to be summoned to shew cause at the next meeting of the said board, why such ferry or ferries should not be discontinued, and to decide according to the testimony adduced.

For what causes
and how ferry
may be discon-
tinued.

SEC. 12. If any person shall think himself or herself ag-

Appeal to circuit court.

grived by the establishment or vacation of a public ferry, by the board doing county business under this act, he, she or they shall have the right of appeal to the circuit court of the proper county, upon his filing bond within thirty days payable to the treasurer of the county, with security to be approved by the clerk, and conditioned for the due prosecution of said appeal and the payment of all costs, if judgment be rendered against him, which bond with a certified copy of the proceedings of the said board, and all the original papers filed in the cause shall be filed in the office of the clerk of the circuit court, and the cause docketed for the ensuing term, within twenty days thereafter; and further proceedings and judgment shall be rendered therein as in other cases of appeal.

Penalty on ferry keeper for neglect of duty.

SEC. 13. Any licensed ferry keeper who shall neglect or refuse to set over, at his ferry (during the hours of day light) any person or property without unnecessary delay, shall be fined by presentment or indictment in any sum not exceeding one hundred dollars; and shall moreover be liable to the party injured in a civil action.

Penalty of non-resident for invading ferry privilege on Ohio and Wabash.

SEC. 14. That hereafter when any person or persons, residing or staying in the states of Kentucky or Illinois, shall ferry across the Ohio or Wabash rivers, from the Indiana shore, any where within one half mile of an established ferry, any person, beast, commodity or any thing whatever, for which the owner of such ferry might be entitled to ferriage had the owner of such ferry have ferried over the same, such person or persons so ferrying the same over as aforesaid, shall be liable to pay the owner of such ferry, the full amount of such ferriage, whether such person or persons received any pay therefor or not; and the owner of such ferry may recover the same by an action of assumpsit before any court having jurisdiction thereof: *Provided however*, that the owner of such ferry shall not be entitled to recover the same, if his ferry at the time should not be in sufficient repair, and be sufficiently attended to, safely and in good time to ferry over such person, beast, commodity or thing so as aforesaid ferried over; nor shall this section be construed to extend to cases of sickness or distress, where the same may be necessary.

Proviso.

Non-resid't entitled to benefits of this act.

SEC. 15. That nothing in this act shall be so construed as to prohibit any citizens of a sister state, owning lands in this state, from enjoying all the rights and privileges of ferrying, that a citizen of this state can by this law.

Penalty for obstructing ferry landings.

SEC. 16. It shall not be lawful to obstruct by steam boats, keel boats, flat boats, or otherwise, the landings of ferries established under this act; but all such ferries shall be entitled to the exclusive use of the whole width of the routes leading thereto, for all appropriate purposes; and any person obstructing such landings shall be subject to the same penalties as are prescribed for the obstruction of public roads and highways.

CHAPTER XLII.

AN ACT authorizing the establishment of Fire Companies.

[APPROVED FEBRUARY 12, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That from and after the publication of this act, it shall be lawful for any number of persons, resident within any town or corporation within this state exceeding forty persons to form themselves into a company or companies for the purpose of extinguishing fire, who on having their names and subscriptions recorded in the recorder's office of the proper county, are hereby authorized to make such rules and regulations as to a majority of said company or companies may seem proper and necessary for the procuring of engines, buckets, hooks, ladders, and all implements necessary for working said engines and exercising the companies raised, and all fines and forfeitures for non-attendance or delinquency imposed by the regulations to be adopted by the companies provided for by this act, not exceeding twenty dollars, shall be recoverable by action of debt before any justice of the peace of the proper county by the said company in their corporate capacity, which said fines and forfeitures shall be for the use of the companies suing for the same.

Fire companies may be formed under certain restrictions.

SEC. 2. That it shall be lawful for the constituted authorities of any incorporated town to establish fire companies in any such town, and give such companies such power and authority, and to govern and regulate them by such by-laws and regulations as may be necessary; and they shall also have authority to appropriate any of their funds to purchase and procure fire engines, hooks, ladders, buckets and all other things necessary for the extinguishment of fires in any such town, and to pass and enforce all such by-laws and regulations as may be necessary to prevent the recurrence of fires in such town.

Towns may form fire co's.

CHAPTER XLIII.

AN ACT against Forcible Entry and Detainer.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That two justices of the peace shall have authority to inquire by a jury, as is hereinafter directed, as well against those who make unlawful and forcible entry into lands and

Trial for forcible entry & detainer by jury before two J. P.

tenements, and with a strong hand detain the same, as against those who having lawful and peaceable entry into the lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hands, or that the same, after a lawful entry, are held unlawfully and with force and strong hands, then such justices shall cause the party complaining to have restitution thereof.

When a warrant shall be issued.

SEC. 2. Where complaint shall be formally made in writing to any two justices of the peace, of any unlawful and forcible entry into any lands or tenements and detainer of the same, or of any unlawful and forcible detainer of the same, after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the sheriff or coroner (as the case may be) of the same county, commanding to cause to come before them, twelve good and lawful jurymen of the same county, and they shall be empannelled to inquire into the entry or forcible detainer complained of; which shall be in the form following, to wit:

State of Indiana, County, Sec.
To the of county GREETING:

Form thereof.

Whereas complaint has been made to the undersigned, two justices of the peace for the county aforesaid, by E. F., of in the county aforesaid, that G. H., of yeoman, on the day of 18 at aforesaid, with force and arms, and with strong hands, did unlawfully and forcibly enter into and upon a tract of land of him the said E. F., in aforesaid, containing acres, bounded as follows, to wit: (or into the messuage or tenement of him the said E. F. as the case may be,) and him the said E. F., with force and strong hands as aforesaid, did expel and unlawfully put out of the possession of the same; (or if it is a forcible detainer only, then the entry shall be described, and the detainer inserted as follows, to wit: and the said G. H. does unlawfully, unjustly, and with a strong hand, deforce and still keep out of the possession of the same:) You are therefore commanded in the name and by the authority of the state of Indiana, to cause to come before us, upon the day of 18 at the house of and at in the county aforesaid, twelve good and lawful jurymen of your county, to be empannelled and sworn to inquire into the forcible entry and detainer (or for the detainer only, as the case may be) before described. Given under our hands and seals, the day of 18.

A. B. }
C. D. } *Justices of the peace.*

SEC. 3. The said justices shall make out a summons to the party complained against, in the form following, to-wit:

The State of Indiana,

To the of county, GREETING:

Form of summons to the defendant.

You are hereby commanded to summon G. H., yeoman of to appear before the undersigned two justices of the peace, for the county of aforesaid, at the hour of on the day of at in the county aforesaid, then and there to answer to and defend against the complaint of E. F. to us exhibited; wherein he complains that (here recite the complaint,) and make to us a return of this summons, with your proceedings therein, on or before the said day. Given under our hands and seals, the day of 18.

A. B. }
C. D. } *Justices of the peace.*

Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days exclusively before the day appointed by the justices for the trial; and if after the service of such summons, the party does not appear to defend, the justices shall proceed to the inquiry in the same manner as if he were present; and when the jury shall appear, the justices shall lay before them the complaint exhibited, and shall administer the following oath to the foreman and to the other jurors. Service thereof

Foreman's Oath.

You as foreman of this jury, do solemnly swear (or affirm) that you will well and truly try whether the complaint of E. F. against G. H. now laid before you, is true, according to the evidence: "So help you God." Foreman's oath.

The Jurors' Oath.

The same oath (or affirmation) that your foreman has taken on his part, you and each of you shall observe and keep on your respective parts: "So help you God." Jurors' oath.

And if the jury find the complaint to be true, they shall return their verdict in the form following:

At an inquisition held before A. B. and C. D., Esquires, two justices of the peace for the county of , and state of Indiana, at in the county aforesaid, on the day of 18, the jury on their oaths, do find that the lands (or tenements) bounded as follows, (as in the complaint,) on the day of 18, were in the lawful and rightful possession of the said E. F., and that said G. H. did on the same day unlawfully, with force and arms, and strong hands, enter forcibly upon the same: (or being lawfully upon the same, did unlawfully, with force and strong hands, expel and drive out the said E. F., and that he still continues wrongfully to detain the possession from him the said E. F.) Wherefore the jury, upon Form of verdict.

their oath (or affirmation) as aforesaid, find that the said E. F. ought to have restitution thereof without delay.

SEC. 4. If by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the panel with bystanders as in other cases; and if the jury after a full hearing of the cause, shall find the complaint laid before them, supported by evidence, they shall all sign their verdict in the form aforesaid; otherwise the defendant shall be allowed his legal costs, and have his execution thereof.

SEC. 5. If the jury shall return their verdict signed by the whole panel, that the verdict is supported by evidence, the justices shall enter up judgment for the complainant to have restitution of the premises, and shall award their writ of restitution accordingly; which writ of restitution shall be in the following form:

The State of Indiana,

To the of county, GREETING:

Whereas, at an inquisition of forcible entry and detainer, held before us the undersigned two justices of the peace, for the county of , in the said state of Indiana, at in the county aforesaid, on the day of 18 , the jurors empanelled and sworn according to law, returned their verdict in writing, signed by each of them, that E. F. was on the day of 18 , in the rightful possession of a certain messuage or tract of land, (as in the verdict returned,) and that &c. (as in the verdict:) Thereupon it was considered by us, justices as aforesaid, that E. F. should have restitution of the same. You are therefore commanded, that taking with you the force of the county, if necessary, you cause the said G. H. to be forthwith removed from the premises, and the said E. F. to have the peaceable restitution of the same; and also, that you levy of the goods, chattels, or lands of the said G. H., the sum of , being costs taxed against him or the trial aforesaid, together with more for this writ and your own fees; and for want of such goods, chattels, or lands of the said G. H. by you found, you are commanded to take the body of the said G. H., and him commit to the common jail of the said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law; and make return of this writ with your proceedings. Witness our hands and seals at aforesaid, the day of , 18 .

A. B. }
C. D. } Justices of the peace.

SEC. 6. Every person or persons who shall be aggrieved by any proceedings which may be had under the provisions of this act, shall be entitled to an appeal to the circuit court of the same county, under the same restrictions and in the same manner that appeals are taken from the judgment of justices, under the statute respecting the trial of other causes, and the said circuit court shall hear and determine the same agreeably to the true intent and meaning of this statute, and carry the same into

final execution; but such judgment shall be no bar to any after action brought by either party.

SEC. 7. This law shall not extend to any person who has had the occupancy, or been in the quiet possession of any lands or tenements for the space of three whole years together, next before, and whose estate therein is not determined or ended.

Three years possession, a bar to a writ of forcible entry and detainer.

CHAPTER XLIV.

AN ACT for the prevention of Frauds and Perjuries.

[APPROVED JANUARY 24, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all leases, estates, interest of freehold or terms of years, or any uncertain interest of freehold or term of years, or any uncertain interest of, in, or out of any messuages, lands, tenements or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

Estates created by parol and without writing estates at will only.

SEC. 2. Except nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts, at least, of what the rent of the premises is really worth.

Leases not exceeding three years excepted.

SEC. 3. And moreover that no leases, estates or interests of freehold, or of term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

Assignment of leases, &c. to be in writing.

SEC. 4. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant upon any special promise, to answer for the debt, default or miscarriage of any other person, or to charge any person upon any agreement in consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement which is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some note or memorandum thereof, shall be in writing, and

Other contracts to be in writing.

Jury to sign the verdict.

When j. p. shall enter up judgment and award a writ of restitution

Form of writ.

Appeal to circuit court.

signed by the party to be charged thereby, or some person by him thereunto lawfully authorized.

Creation of trust to be in writing. SEC. 5. All declarations or creations of trust or confidence, of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party, who by law may be enabled to declare such trust or confidence, or by his last will in writing, or else the same shall be utterly void and of none effect: *Provided always*, That when any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case, such trust or confidence shall be of the like force and effect, as the same would have been, if this act had never been passed, any thing herein contained to the contrary notwithstanding.

Trusts by implication or construction excepted. SEC. 6. All grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by last will or devise.

Assignment of trusts to be in writing. SEC. 7. Every deed or conveyance in the nature of a mortgage, which shall be made and executed in regard to any lands, tenements or hereditaments, situate in this state, shall be acknowledged or proved and recorded within ninety days after the execution thereof, and if not so acknowledged or proved and recorded, the same shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such deed or conveyance, be recorded before the proving and recording of the deed under which such subsequent purchaser or mortgagee may claim. And all deeds and conveyances, which shall be made and executed within this state, of and concerning any lands, tenements or hereditaments therein, or whereby the same may in any way be affected in law or equity, shall be acknowledged by the grantors or bargain-ers, or proved by one or more of the subscribing witnesses thereto, before the recorder of the county in which such estate may be situate, or one of the judges of the supreme court of this state, or before one of the judges of the circuit court, or some justice of the peace of the county within which such estate may be situate, and shall be recorded in the office of the recorder of the county in which such estate may be situate, within twelve months after the execution of such deeds or conveyances; and every such deed or conveyance as shall at any time hereafter, be made and executed, and which shall not be acknowledged or proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the acknowledging or proving and recording of the deed, conveyance or mortgage, under which such subsequent purchaser or mortgagee may claim.

Mortgages of lands shall be proved and recorded within 90 days.

Or be adjudged fraudulent.

Deeds of lands, &c. to be proved and recorded within 12 mos.

Or be adjudged fraudulent.

Exception.

Deeds, &c. how proved, when grantor and witnesses are dead. SEC. 8. If the grantors and witnesses of and to any deed or conveyance, are deceased, or cannot be found, it shall be lawful for any judge of the supreme court, or any judge of the circuit court, or justice of the peace of the county in which the

lands granted, conveyed or mortgaged by such deed or conveyance lie, to take the examination of any witness or witnesses to prove the hand writing of any such deceased or absent grantor or grantors, if proof of the hand writing of the witnesses to such deed or conveyance cannot be had; which proof shall be certified by the judge or justice before whom the same shall be made, and such deed or conveyance, being so proved, shall be recorded as in other cases above directed.

SEC. 9. Whenever any husband and wife shall incline to dispose of and convey the estate of the wife, or her right of, in and to any lands, tenements or hereditaments whatsoever, it shall and may be lawful for such husband and wife, the wife not being less than twenty-one years of age, to make, seal, execute and deliver any grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance whatsoever, for the lands, tenements or hereditaments intended by them to be passed and conveyed, and after the execution thereof to appear before one of the judges of the supreme court, or before a judge of the circuit court, or justice of the peace for the county within which the estate conveyed or granted is situate, or before the recorder of such county, and acknowledge such deed or other instrument above enumerated, which acknowledgement such officers are respectively authorized to take; and in taking such acknowledgement, the officer taking the same shall examine the wife separate and apart from her husband, and shall read, or otherwise make known to her, the full contents and purport of such deed or conveyance, and if upon such separate examination, she shall declare that she did voluntarily and of her own free will and accord, and as her act and deed, seal and deliver the said deed or conveyance, without any coercion or compulsion from her husband, every such deed is hereby declared to be good and valid in law, to all intents and purposes, as if the said wife had been sole and not covert at the time of such sealing and delivering: *Provided*, that the officer taking such acknowledgement, shall certify the same, under his hand and seal by endorsement upon such deed or conveyance.

Husband and wife to join in conveying her interest in real estate.

Wife to be separately examined.

SEC. 10. It shall and may be lawful for any judge of the supreme or circuit courts, or any justice of the peace of any county in this state, to take the acknowledgement or proof of the execution of any deeds or conveyances, or release of dower of any lands or tenements, situate within any county in this state, which acknowledgements, proof or release, so taken and made, being duly certified by the clerk of the circuit court of the county to which such officer may belong, and attested by the seal of such court, shall be valid and effectual, and have the same force and effect as if the same were taken before an officer of the county in which the estate granted or conveyed by the deeds or conveyances acknowledged or proved, may be situate.

Acknowledgments of deeds &c. taken in other counties, &c.

SEC. 11. All deeds and conveyances made and executed by any person without this state, and brought hither to be recorded in the county in which the lands thereby granted or con-

Authentication of foreign deeds.

veyed may be situate, the acknowledgement thereof having been made in the manner hereinbefore directed, before any judge or justice of the peace of the proper county, in which such deeds or conveyances may have been made and executed, and certified under the seal of such county by the proper officer, shall be as valid and effectual in law, as if the same had been made and acknowledged as aforesaid, before a judge of the supreme court, or judge of the circuit court, or justice of the peace of the county within which the lands granted or conveyed by the deeds or conveyances so acknowledged, might be situate, any thing herein contained to the contrary notwithstanding: and it is hereby made the duty of each and every recorder of the several counties in this state, to receive and take the acknowledgement of deeds and other instruments of writing, offered for record.

Mortgage, satisfaction of, how entered.

SEC. 12. Every mortgagee of any real or personal estate, having received full satisfaction and payment of the sum or sums actually due to him from the mortgager, shall at the request of such mortgager, enter satisfaction upon the margin or other place in the record of the mortgage, whereby such sums may be secured, which shall forever bar all actions brought or to be brought upon such mortgage, and shall operate as a complete discharge and release thereof.

Devises to be in writing, attested by two witnesses.

SEC. 13. All devises and bequests of any lands or tenements, devisable by force of this act, or any other law of this state, shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, by two or more competent witnesses, or else they shall be utterly void and of none effect.

Revocation to be in writing, &c.

SEC. 14. And moreover, no devise in writing, of lands, tenements or hereditaments, or any clause thereof, shall at any time be revocable, otherwise than by some other will or codicil in writing, declaring the same, or by burning, cancelling, tearing or obliterating the same, or by the testator himself, or in his presence and by his direction and consent; but all devises and bequests of lands and tenements, shall remain and continue in force until the same be burnt, cancelled, torn or obliterated, by the testator or by his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of two or more competent witness declaring the same.

Wills and codicils, how proved

SEC. 15. That proof of such wills, testaments, codicils and revocations, shall be by the oath of one or more of such witnesses, if they be living and within the jurisdiction of this state, and if they be not alive, or without the jurisdiction aforesaid, then by proof of the hand writing of one or more of such witnesses, or of the hand writing of the testator; and wills, testaments, and codicils, devising lands in this state, executed abroad and proved according to the law of the country in which the same may have been executed, and duly certified under the seal of the court or officer taking such proof, and authenticated by the certificate of the presiding judge of such

Wills executed out of state, how certified.

court, or the first judge of the county or district within which such proof may have been taken, that such authentication under the seal of the court or officer taking such proof as aforesaid, is in due form of law, shall be sufficiently proved, to admit the same of record, and shall be of like force and effect as if such proof were taken within this state.

SEC. 16. That proved wills, testaments, and codicils, devising real estate, or an interest therein, shall be admitted to record in like manner as proved conveyances of real estate, and the records and copies of such records, shall be of like force and effect, as in cases of conveyances of real estate; but no lands, tenements or hereditaments shall pass by any will, testament or codicil, to any person or persons, devisees in such will, testament or codicil, who shall know of the existence thereof, and have the same in their power to control for the term of three years, unless within that time such person or persons shall cause the same to be duly proved according to the provisions of this act; but such neglect shall be deemed fraudulent and avoid such devise, and such lands, tenements and hereditaments, shall descend to the heirs of the testator; and all legacies and devises, made by any last will, testament or codicil, to a subscribing witness thereto, shall be void, and the property so devised or bequeathed, shall go to the heirs or residuary legatee or devisee of such devisor.

SEC. 17. No nuncupative will, whereby the value of fifty dollars may be bequeathed, shall be valid, unless the same be proved by at least two competent witnesses, present at the making thereof; nor unless the testator request those or some of those present to bear witness to such his last will, or to that effect; nor unless the same be made in the last sickness of the testator; nor unless within fifteen days after the making thereof, the substance thereof be committed to writing; but this provision shall not affect a testamentary disposition made by a person at sea, or in actual military service, of his moveables, wages and personal estate, at such time actually in his possession; and no nuncupative will shall be proved until the widow and next of kin of the alleged devisor, shall first have had reasonable notice of the time and place of proving the same.

SEC. 18. That hereafter any estate, *per auter vie*, shall be devisable by will in writing, signed by the party devising the same, or by some other person in his name and in his presence, and by his express direction, attested and subscribed in the presence of the devisor, by two or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if the same shall come to him by reason of a special occupancy, as assets by descent, as in case of lands held in fee simple; and if there be no special occupant thereof, it shall be assets in the hands of the executors or administrators of the party, that may have had the estates thereof.

SEC. 19. No will in writing, concerning any goods or chattels, or personal estate, nor any clause, devise, or bequest therein, shall be altered or changed by any words, or will by word of mouth only, except the same be in the lifetime of the

Their force and effect.

Proved wills, &c. when recorded to operate as conveyances.

Wills to be void, unless recorded within three years.

Legacy to subscribing witness void.

Nuncupative will when valid.

Exception as to sailor, etc.

Estate per auter vie, devisable as estates in fee simple, and assets in the hands of the heir or executor.

Alteration of devise of goods, to be in writing.

testator committed to writing, and after the writing thereof read to the testator and allowed by him, and proved so to be done, by at least two witnesses.

Subsequent birth of a child shall revoke a will.

SEC. 20. If after the making of a last will and testament, a child be born to the testator, and no provision be made in the will for such a contingency, such birth shall operate as an entire revocation of such last will and testament.

Sale of goods void, unless by part payment or delivery, etc.

SEC. 21. No contract for the sale of any goods, wares or merchandize, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest, to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Judgm'ts it et. and supr. courts shall bind real estate from rendition.

Transcripts of judgm'ts may be sent to other cos. to bind real estate.

Transcript to be filed and recorded.

Operation thereof.

Limitation of lien of judgm'ts prior to 1826.

SEC. 22. Judgments in the circuit and supreme courts of this state, shall have the operation of, and shall be liens upon the real estate of the person or persons against whom such judgments may be rendered, from the day of the rendition thereof, in the county within which such judgments may be rendered; and it shall be the duty of the clerks of such courts, when applied to by any person interested in any judgment rendered by any of the courts aforesaid, to make out and deliver to such applicant, an attested copy of the record of such judgment, authenticated by the seal of such court, which attested copy may be by such person filed in the office of any clerk of the circuit court within this state; and when so filed, the said clerk in whose office the same may be filed, shall record the same among the records of the court of which he is clerk, and enter the same on the judgment docket; and such attested copy when so filed, recorded, and entered as aforesaid, shall operate as a lien upon the estate of the person or persons against whom such judgment may have been rendered, situate in the county in which the same may have been so as aforesaid filed, recorded and entered, in the same manner and to the same legal extent that the same would have done, had such judgment been originally rendered in the circuit court of such county; which lien shall operate from the day of filing, recording and entering such copy as aforesaid. But no execution shall ever issue upon such attested copy, although the record thereof shall have the same force and effect in every other point of view, as any other record of such court might or could have.

SEC. 23. That no judgment rendered prior to the year eighteen hundred and twenty-six, shall continue to operate as a lien upon real estate, as against *bona fide* purchasers, as subsequent incumbrances, for a longer time than ten years after the first day of January, in the year one thousand eight hundred and twenty-six; and that all judgments rendered in the year one thousand eight hundred and twenty-six, and since that to be rendered, shall cease to operate as liens upon real estate, after the lapse of ten years from and after the date of the ren-

dition thereof, unless the same be renewed and revived by *scire facias* against the judgment debtor, his heir or devisee and *terre tenant*; but any time of restraint upon the judgment creditor, by the order or decree of a court of justice, or by agreement between the plaintiff and defendant, entered of record, prohibiting execution to be done upon such judgment, shall not be computed as a part of the time aforesaid.

SEC. 24. That for the benefit of purchasers and others, the clerk of any court of record shall keep a book in which during every term of such court, or within thirty days thereafter, he shall docket all judgments rendered at such term, for any sum of money, in alphabetical order, by the surname of the party against whom such judgment may have been rendered, and shall enter therein the parties to such judgment, both plaintiffs and defendants, the date of the rendition of such judgment, and the amount of debt, damages and costs thereby recovered; and such docketing shall be matter of record, and open to the inspection of all persons at reasonable times; and if such clerk shall neglect the duty aforesaid, the party injured shall have a right to recover of such clerk double damages, by action on the case against such clerk, or of such clerk and his securities, by action on the official bond of such clerk.

SEC. 25. It shall and may be lawful for every sheriff or other officer to whom any writ or precept may be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance hereafter to be rendered, made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements and hereditaments, as any other person or persons be in any manner or wise seized or possessed, or shall hereafter be seized or possessed, in trust for him against whom execution is so sued, like as such sheriff or other officer might or ought to have done, if the said party against whom such execution is or may hereafter be so sued, had been seized of such lands, tenements or hereditaments of such estate as they be seized of, in trust for him, at the time of such execution sued, which lands, tenements or hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed, in trust for the person against whom such execution shall be sued; and if any *cestui que trust* shall hereafter die, leaving in trust in fee simple, any estate, to descend to his heir or heirs, such trust shall be deemed and taken, and is hereby declared to be assets by descent, and the heir or heirs shall be liable to and chargeable with the obligation of his ancestors, for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession, in like manner as the trust descended; any law, usage or custom to the contrary notwithstanding: *Provided always*, that no heir or heirs, who may become chargeable by reason of any estate or trust made assets in his hand by this law, shall by reason of any kind of plea or confession of the action, or by

Lien of judgm'ts since 1826 limited.

Unless revived or stayed by agreement.

Clerk shall docket judgments in alphabetical order.

Penalty for neglect.

Execution may be levied on trust estate.

Trust estate on death of cestui que trust shall be assets, &c.

Heir shall not be chargeable personally.

suffering judgment *nient dedire* or any other matter, be chargeable to pay the condemnation out of his own estate, but execution shall be sued and done, of the whole estate so made assets in his hands by descent, in whose hands soever it may come, after the writ, purchased in the same manner as it is to be by the common law where the heir at law pleading a true plea judgment is thereupon prayed against him, any thing in the present act to the contrary notwithstanding.

SEC. 26. No writ of fieri facias, or other writ of execution, shall bind the property of the goods of the person against whom such execution is sued out, but from the time that such writ shall be delivered to the sheriff or other officer, for execution; and it shall be the duty of such sheriff or other officer, upon the receipt of such writ, without any fee for so doing, to endorse upon such writ the day of the month and year on which he received the same: *Provided however*, that the lien of such writ of fieri facias, or other writ of execution, shall be divested in favor of any other fieri facias, or other writ of execution, in the hands of any other officer, without regard to the time of delivery, if such other officer shall by virtue of such writ in his hands, make the first levy on such goods, and proceed with due diligence in perfecting execution of the same.

AN ACT to amend an act entitled "an act for the prevention of Frauds and Perjuries," approved January 24, 1831.

[APPROVED FEBRUARY 3, 1832.]

Be it enacted by the General Assembly of the state of Indiana, That when wills, testaments and codicils, devising or authorizing a sale of real estate, or any interest therein, situate or being in this state, shall have been proved abroad, and according to the laws of the state or country where such proof is made, copies of such proved wills, testaments and codicils, or the records thereof, shall be admitted to record in like manner, and have the like force and effect, as proved conveyances of real estate; provided said copies shall be authenticated in the same manner, as records and judicial proceedings are required to be, under the act entitled "an act for rendering authentic as evidence in the courts of this state, the public acts records and judicial proceedings of courts of the United States," approved January 10th, 1818: *And provided also*, that such copies shall only be prima facie evidence of being true copies of said wills, testaments and codicils, and the proof thereof.

Foreign will &c. admitted to rec'd in this state and their effect.

Proviso.

Proviso.

But execution shall be done of whole estate wherever &c.

Fi. fa. shall bind goods from time of delivery to sheriff, &c.

Endorsement of sheriff, &c.

Proviso.

First levy to have preference.

CHAPTER XLV.

AN ACT authorizing the arresting and securing Fugitives from Justice.

[APPROVED FEBRUARY 12, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That if any person shall commit any crime in any of the United States or the territories thereof, and shall flee into this state, it shall be lawful for any judge of the supreme or circuit court, or justice of the peace within this state, on the oath or affirmation of any person charging such fugitive with a crime, to issue his warrant, and cause such fugitive to be arrested and brought before him; and after hearing the proofs and allegations for and against such fugitive, if in the opinion of such judge or justice, the proof is evident or presumption strong, as to the guilt of the person charged, it shall be the duty of the judge or justice, to commit such fugitive from justice to the common jail of the county where such arrest may be made, for any length of time not exceeding one month; or in case any sheriff, coroner or constable, shall have pursued such fugitive, it shall be the duty of such judge or justice, to give such sheriff, coroner or constable, a warrant to remove such fugitive; which shall be a sufficient authority to remove such fugitive from this state, to the state or territory from which he fled.

Fugitives from justice fleeing into this state how proceeded against.

SEC. 2. That when any warrant, capias or other process of a criminal nature shall issue from any judge, justice or other authority competent to issue the same, and shall be put into the hands of any constable or other person properly authorized to execute the same, against any person charged with the commission of any offence against the laws of this state, or when any person shall have escaped from legal custody, it shall and may be lawful for the officer holding such warrant, or from whose custody such person shall have escaped, to pursue such person to any county within this state, and arrest and secure him or her; and such officer shall have authority, by virtue of the powers herein given, to take the person thus arrested, to the county in which the offence was committed, or from which the escape was made: *Provided however*, that it shall be the duty of the said officer, previous to making any such arrest in any other than his own county, to go before some justice of the peace in the county, in which the fugitive is supposed to be, and make oath that the process was regularly issued in the county from which such fugitive fled, or in case of escape, that he is in pursuit of a person, naming him, who has escaped from legal custody; and when such oath shall be made, it shall be the duty of such justice when a warrant is produced, to endorse his name as such justice, on the back of said warrant, or in case of escape and pursuit, issue a warrant directed to such officer, authorizing and commanding him to seize such fugitive, and re-

Fugitives fleeing from one co. to another in this st'e how arrest'd

Oath being made in distant co's. justice to endorse his name on the warrant.

take him to the county from which he may have escaped; which endorsement or new warrant, shall give to such officer as full and ample authority in all respects, to make such arrest or recaption, as he would have in the county in which he was elected or appointed.

Judges or justices of the peace may cause fugitives to be arrested & examined.

SEC. 3. That if any person shall commit any crime in any county within this state, and shall flee or remove into another county, it shall be lawful for any judge of the supreme court or circuit court, or justice of the peace within the county to which such person shall have fled or removed, on the oath or affirmation of any person, charging such fugitive with such crime (either directly or on the belief of the affiant,) to issue his warrant and cause such fugitive to be arrested and brought before him; and after hearing the proofs and allegations against such fugitive, if, in the opinion of such judge or justice of the peace, the proof or presumption is strong as to the guilt of the person charged, it shall be the duty of the judge or justice of the peace to make out an order, under his hand and seal, commanding some constable of his county to convey such fugitive to the county in which he committed the offence charged against him, and to deliver him to some judge of the circuit court or justice of the peace in such county, together with the order of the judge or justice before whom the said fugitive was examined: and it shall be the duty of such judge or justice to whom such fugitive shall be delivered, to cause him to be committed to the custody of some constable or sheriff of the county for safe keeping; and to forthwith summon the person or persons against whose person or property the said offence shall have been committed, or some witness or witnesses thereto, and such judge or justice shall, on the examination, be governed in all respects as though said complaint had been made and affidavit had been taken before him in the first instance. And the constable who shall convey such fugitive from the county where he was first arrested, to the county in which the offence was committed, shall receive the same fees for such service as are by law allowed to sheriffs for like services, and subject to the same rules and conditions.

When no sufficient prison fugitive may be sent to jail of next county.

SEC. 4. That when there is no sufficient prison in any county, wherein any criminal offence shall have been committed, it shall be lawful for any judge of the circuit court of such county, upon application of the sheriff thereof, to order any person charged with a criminal offence, and committed or ordered to be committed to prison, to be sent to the jail of the county nearest, having a sufficient jail; and the sheriff of such county shall on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid; at the expense of the county from which such prisoner was sent; and the said sheriff shall upon the order of the circuit court, or a judge of said county, re-deliver such prisoner when demanded.

CHAPTER XLVI.

AN ACT relative to Fugitives from Labor.

[APPROVED JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That any person or persons of any state or territory, having any claim to the service of any person or persons within this state, may in person or by attorney, go before the clerk of any circuit court within this state, and make affidavit, that he, she or they, or the persons for whom he or they are agents or attorneys, have or has a just claim to the service of such fugitive person or persons, agreeably to the laws of the state from which such fugitive or fugitives from labor, hath or have fled, as also the name or names of the owner or owners; (when affidavit is made by attorney;) which affidavit shall be taken by such clerk and filed in his office; whereupon it shall be the duty of such clerk to issue his warrant, directed to the owner or owners of such fugitive from labor, or to his, her or their agent or attorney, commanding him or them forthwith to carry such fugitive before some justice of the peace or judge of the circuit court, or supreme court within this state; and it shall be duty of the clerk to affix the county seal thereto, and the warrant so sealed as aforesaid, shall be sufficient authority for the person in whose possession the same may be, to authorize him to arrest such fugitive from labor, wherever he may be found in this state, and him to convey before some justice of the peace, judge of the circuit or supreme courts, that may reside in the county or district where such fugitive shall be found.

How persons of another state claiming service of one in this, shall proceed.

Duty of cl'k of circuit court.

SEC. 2. It shall be the duty of such justice of the peace or judge, (as the case may be,) to cause such fugitive from labor to be taken into custody, and the same to commit or let to bail until the parties shall be ready for trial, which time shall not exceed sixty days, and shall be at the discretion of the justice or judge, upon the circumstances of the case made known by affidavit; and it shall be the duty of such justice of the peace or judge, as the case may be, to hear and determine the case in a summary way; and if such justice or judge shall be of opinion, that such fugitive did owe service according to the claim sworn to, he shall give such owner or agent a certificate of that fact, which shall be sufficient authority for such agent or owner, to remove such fugitive from the state: *Provided however,* that either party may appeal by paying the costs of such trial, and giving security for the costs that may accrue on such appeal; and in all cases where an appeal may be taken, it shall be the duty of the justice or judge to require of such fugitive from labor, to give security for his appearance, and abiding the event of such trial, and on failure thereof, to commit such fugitive to the jail of the county, there to be kept at the expense of the

Judge or justice may commit, or let to bail.

Determine in a summary way.

Give certificate.

Appeal may be granted.

Fugitive may be committed.

Proviso.

appellant until the time of such trial: *Provided also*, that no such appeal shall be granted to such fugitive from labor, until he or she shall make out and file affidavit, that he or she does not owe service.

Sh'ff to notify
associate judges.

SEC. 3. In all cases where an appeal may be granted under the provisions of this act, it shall be the duty of the justice of the peace, or the judge, as the case may be, granting such appeal, to issue his warrant to the sheriff of the county directing him forthwith to notify the associate judges thereof, or any circuit judge having jurisdiction in such county; whose duty it shall be, when so notified, to attend at the court house of the county, in which such arrest shall have been made, on the day named in the warrant of the judge or justice as aforesaid, which day shall not be more than five days after the arrest; and it shall be the duty of such sheriff, to summon a good and lawful jury of the county, who shall attend at the time and place appointed for trial, and for failure so to do, shall be subject to like penalties as jurymen are in other cases.

Shall summon a
jury

SEC. 4. That on the appearance of the parties before such special court, if either of the parties shall make it appear to the satisfaction of such court, that they cannot safely go into trial at that time, such court may continue such cause, until the ensuing term of the circuit court for said county, and shall send up a transcript of their proceedings to said court, together with the proceedings had before the judge or justice, before whom the first proceedings were had; on which the clerk of said circuit court shall docket such suit, where the same shall stand for trial, subject to the same rules of law and proceedings generally, as other civil actions are; any thing herein to the contrary notwithstanding.

Proceedings of
special ct. may
be certified to c.
court.

ACT OF CONGRESS.

AN ACT respecting Fugitives from Justice, and persons escaping from the Service of their Masters.

[APPROVED FEBRUARY 12, 1793.]

Fugitives from
justice, how de-
manded by exe-
cutive of state
whence he fled.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the per-

son so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and cause the fugitive to be delivered to such agent when he shall appear: but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses, incurred in the apprehending, securing, and transmitting, such fugitive to the state or territory making such demand, shall be paid by such state or territory.

SEC. 2. *And be it further enacted*, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Ag't to transp't
him whence he
fled.Penalty for re-
scuing fugitive.

SEC. 3. *And be it further enacted*, That when a person held to labor in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled.

Fugitives from
labor, how re-
claimed by mas-
ter.

SEC. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover,

Penalty for ob-
structing arrest
rescuing or con-
cealing fugitive
from labor.

to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.

CHAPTER XLVII.

AN ACT to prevent Gaming.

[APPROVED FEBRUARY 17, 1838.]

Gaming contracts void.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all promises, agreements, notes, bills, bonds, contracts, mortgages, or other securities whatsoever, made or entered into, after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance or security, shall be for money or other valuable thing whatsoever, won, laid or bet on the result of any election, at cards, dice-tables, tennis-balls, or other game or games whatsoever, or at any horse-race, or cock-fighting, or any other sports or pastime, or on any wager whatever, or for the reimbursing or repaying, any money lent or advanced, at the time of such play, bet or wager, for the purpose of being bet or wagered, shall be utterly void and of no effect, to all intents and purposes whatsoever,

How and when money won by gaming may be recovered back.

SEC. 2. If any person or persons at any time, by playing at any game or games, or betting on the hands or sides of such as do play at any game or games, shall lose to any one or more persons so playing or betting, any sum of money, or any valuable thing, and shall pay or deliver the same, or any part thereof; the person or persons, so losing and paying or delivering the same, shall be at liberty within six months next following, to sue for and recover the money or other valuable thing, so lost and paid or delivered, or any part thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any court, or before any justice of the peace, having jurisdiction thereof; in which action, it shall be sufficient for the plaintiff to allege, that the defendant is indebted to the plaintiff, or has received for the plaintiff's use, the money so lost and paid, or converted the goods won of the plaintiff, to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter; and in case of the party so losing such money, or other thing aforesaid, shall not within the time aforesaid, bona fide, without covin or collusion, sue and with effect prosecute for the money or other thing, so lost and paid or delivered, it shall and may be lawful, to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same with costs of suit, against any such winner or winners, for the benefit of the family, or next of kin to the person or persons losing the same; and in case there shall be no such family or kindred, for the benefit of county seminaries.

SEC. 3. Every person by virtue of this act, who shall or may be liable to be sued for money or other things so won as aforesaid, shall be compelled to answer upon oath, such bill or bills in chancery, preferred against him or them, for discovering the money or thing so won at play as aforesaid: *Provided* however, upon discovery and repayment of the money or things so to be discovered and repaid as aforesaid, the person or persons discovering and repaying the same with costs, shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred, by playing for, or winning such money or other things so discovered and repaid.

SEC. 4. If any person or persons shall keep a room, building, arbor, booth, shed or tenement to be used and occupied for gambling, or if any person or persons being the owner or owners of any room, building, arbor, booth, shed or tenement, shall rent the same to be used and occupied for gambling, the person or persons so offending, shall, on conviction, be fined in any sum not less than fifty nor more than five hundred dollars—and it shall be sufficient evidence that such room, building, arbor, booth, shed, or tenement was rented for the purpose aforesaid, if said owner or owners know that his, her, or their lessee keeps and uses therein any gaming table, apparatus or establishment for the purpose of winning, betting or gaming money, or other valuable article, unless such owner or owners immediately make complaint thereof, or take other sufficient means to prevent and restrain the same.

SEC. 5. In all trials on indictments or civil actions for gaming, the fact that a person called as a witness was a party in the gaming, shall not excuse such person from testifying against any other person concerned.

CHAPTER XLVIII.

AN ACT to suppress professional Gambling.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every person who shall be the keeper and exhibitor of any gaming table, such as A B C, or E O tables, billiard table, roulette, shuffle board, faro bank or any other gaming table, establishment or apparatus for the purpose of winning or gaining money or other article or property of value, and every person who shall get his livelihood by gaming, and having no other visible occupation or calling; or that are found wandering about from place to place, without fixed residence in this state in the habit or practice of gambling, shall be deemed and taken as professional gamblers; and shall upon conviction

Punishment for keeping and exhibiting gaming tables.

tion thereof, be imprisoned at hard labor in the state prison, for not less than one year nor more than five years at the discretion of the jury trying the same, who may also add disfranchisement for any term not exceeding five years.

This act to be given in charge to grand juries.

Duty of j. p., sh'ffs and other officers.

SEC. 2. It shall be the duty of the circuit courts to give this act in charge to grand jurors; and it shall be the duty of justices of the peace in the several counties, on their own view or on information against any person offending against the provisions of this act to issue their warrant and cause to be arrested and brought before some justice of the peace of the proper county, and on examination such offender to commit, let to bail, or discharge as the case may require, and it shall be the duty of all sheriffs and constables on view or otherwise coming to a knowledge of any violation of the provisions of this act, forthwith to take the necessary legal measures for the arrest of the offenders and them to carry before the next (nearest) justice of the peace for examination, and any of the aforesaid officers neglecting or refusing to execute the duties herein enjoined shall be liable for neglect of official duty, and on conviction thereof shall be fined in any sum not less than five dollars and not more than fifty dollars at the discretion of the jury trying the same.

Persons concerned may be compelled to give evidence.

SEC. 3. All persons legally called to give evidence against another for gambling shall be deemed and taken as a competent witness notwithstanding such person may have been concerned as a party, aider or abettor; and in such case, such aider, abettor or party shall not criminate himself by the testimony he may give, and it shall be the duty of courts, juries, and justices of the peace, to inform all such persons so called to give evidence, that they are exonerated from indictment or punishment, for such gambling, and they are hereby so exonerated from punishment for such particular offence.

Witnesses standing mute how punished.

SEC. 4. In all cases where witnesses will stand mute, when called to give testimony against persons charged with gambling whether professional as defined by this act, or other gambling, he shall be deemed and taken as guilty of a contempt of the civil authority and shall be fined or imprisoned, or both, at the discretion of the court or justice of the peace before whom such contempt shall be committed.

CHAPTER XLIX.

AN ACT directing the mode of suing out and prosecuting writs of Habeas Corpus.

[APPROVED FEBRUARY 17, 1838.]

Judge may order writs of habeas corpus to be issued.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That hereafter upon petition verified by affidavit made to any judge of the supreme or circuit courts in this state by or on behalf of any person supposed to be illegally impris-

soned or detained in custody, which petition shall distinctly set forth the causes of capture and detention, the name of the officer or person by whom restrained, and the place where, it shall be the duty of such judge to endorse an order on such petition, directing the clerk of the circuit court of the proper county, to issue the writ of habeas corpus, and upon the filing of said petition and order in the office of the clerk, it shall be his duty to issue such writ under his hand, attested by the seal of said court, directed to the sheriff, or other person having the petitioner in his custody, which writ shall be substantially in the following form:

State of Indiana, } To A. B., of the county aforesaid:
county, set. } You are hereby commanded, that
you have the body of C. D. by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before me at &c. on &c. (or immediately after the receipt of this writ) to do and receive what shall then and there be considered concerning the said C. D. and have you then there this writ. Witness, &c.

Form of writ.

SEC. 2. Said writ shall be made returnable forthwith before such judge, at such place as he may designate, and may be served upon the person to whom directed, by the sheriff, coroner, or any constable of the county, or any private person who shall verify the service thereof by oath, and must be served by delivering to such person a true copy thereof.

Writs when and where returnable.

SEC. 3. Upon the return of said writ before the judge ordering the same, together with the body of the petitioner, and the cause of his detention, it shall be his duty to examine the warrant of commitment, or other cause of detention, and if it shall manifestly appear, that the petitioner is illegally or unjustly detained, he shall order him forthwith to be discharged: *Provided however,* that if it shall appear to such judge, by affidavit or otherwise, or upon inspection of the warrant of commitment, or other cause of detention, that the prisoner is guilty of an offence, or ought not to be discharged, although the same may be defectively, informally or unsubstantially set forth in the warrant of commitment, it shall be his duty to issue his warrant, under his hand and seal, and cause to come before him forthwith, the original complainant, or other necessary witnesses; and upon their examination, he shall discharge, hold to bail, if the offence be bailable, remand or recommit the prisoner, as to him shall seem just.

Rules of decision by the judge.

SEC. 4. It shall be the duty of the judge to return said writ, together with an endorsement of his proceedings and final order thereon, to the office from whence it issues; and in all cases where he shall let to bail, it shall be his duty to take the necessary recognizances of the party charged, as also of the witnesses on behalf of the state, and return the same along with the said writ and proceedings.

Judge shall return writ.

SEC. 5. If the person to whom such writ of habeas corpus shall have been directed, shall fail or refuse to obey the com-

Penalty upon persons disobeying writ.

mand thereof as therein required, upon the same having been duly served upon him as above prescribed, it shall be the duty of the judge before whom the same is made returnable, to issue an attachment forthwith against the person so disobeying, which may be delivered to the sheriff, coroner or any constable to be executed, which shall be served, returned and acted upon as is usual in like cases.

Manner of returning writ.

SEC. 6. It shall be the duty of the person to whom such writ may be directed and returned served upon him as aforesaid to make return thereto in writing, in which he shall state plainly and unequivocally the following matters in substance, to-wit: 1st. Whether he has or has not the party in custody, or under his restraint. 2d. If he have the party in his custody or power, or under his restraint, the authority or true cause of such imprisonment or restraint setting forth the same at large: If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to his return; and the original shall be produced and exhibited on the return of the writ to the court or officer before whom the same is returnable: If such person shall have had the prisoner in his power or custody, or under his restraint, at any time, prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place; which returns shall be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

Penalty for judge or other officer for refusing to act.

SEC. 7. If any judge shall, after a proper application is made, refuse to grant an order for a writ of habeas corpus, or if the officer or other person to whom the same may be directed, shall refuse obedience to the mandate of said writ, he shall forfeit and pay to the person aggrieved, a sum not exceeding five hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof.

SEC. 8. That when any such writ shall be returned it shall be lawful for the person serving out the same to plead as many matters either traversing or avoiding the return as he may think proper, which pleas shall be verified by his oath, or he may at his election except to the sufficiency thereof; and replications and rejoinders shall be allowed as in other cases, until complete issues are made up; and thereupon the judge shall proceed in a summary way to hear such allegations and proofs as may be adduced in support of such imprisonment and detention, or against the same, and dispose thereof, as the justice of the case may require.

SEC. 9. It shall be lawful and it is hereby made the duty of any judge on application made therefor, to issue a writ of habeas corpus on Sunday, as well as on any other day of the week, under the same regulations and penalties as if the same were issued on any other day of the week.

SEC. 10. Whenever any person may be imprisoned or detained in custody on any criminal charge, for want of appear-

ance bail, such person shall be entitled to a writ of habeas corpus, upon averring that fact in his petition in order to enable him to give bail.

CHAPTER L.

AN ACT to improve the breed of Cattle and Horses.

[APPROVED FEBRUARY 15, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall and may be lawful for any person to take up and geld any stud horse, of the age of eighteen months or upwards that may be found running at large, out of the enclosed ground of the keeper, and if the said horse should die in consequence thereof, the owner shall have no recourse against the person who shall have so taken up and gelded said horse; *Provided*, that the person so gelding shall be a competent person to do the same, and the owner shall moreover pay to the person who has so taken up and gelded said horse or caused it to be done, the sum of five dollars, to be recovered before any justice of the peace of the county by an action of debt.

Stud horses may be taken up and gelded.

SEC. 2. It shall not be lawful for any person to geld any horse above fourteen and one half hands high, that is known to be kept for covering mares; but if any owner or keeper of any covering horse, shall wilfully or negligently suffer him to run at large out of the enclosed premises of the owner or keeper, any person may take up said horse and convey him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence double the sum, and for a third offence, may be taken up and gelded as provided for in the first section of this act.

Horses may be taken up and conveyed to the owner.

SEC. 3. It shall be lawful for any person at the risk of the owner, to alter any ram that may be found running at large out of the enclosed ground of the owner thereof, at any time between the twenty-fifth of August and the first day of December in every year.

Rams may be altered.

CHAPTER LI.

AN ACT providing for the support of Illegitimate Children.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That on complaint made to any justice of the peace in this state, by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which if born, also may be a bastard, accusing any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice, to answer to such complaint; and on return of such warrant the justice in the presence of such accused person, (if such accused person can be taken by the proper officer, if not, then in his absence,) shall proceed to examine the complaint, on oath, respecting her cause of complaint, and such accused person shall be allowed to ask by himself or his counsel, such complaint under her oath or affirmation, (as the case may be,) any reasonable question necessary to his justification, and such answers and questions, with every other part of the examination shall be reduced to writing by the justice, and if on such examination, such accused person shall satisfactorily appear to be the father of the child so begotten, he shall pay or cause to be paid to the woman complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction; and shall further enter into bond with the overseers of the poor of the township in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges toward the maintenance of said child; and in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution.

SEC. 2. When any woman has a bastard, and neglects to bring a suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the overseers of the poor in any township, interested in the support of any such bastard child, when sufficient security is not offered to save the county from expense shall bring forward a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 3. In case such accused person do not comply with the provisions of the first section contained in this act, the justice to whom such complaint was made, shall bind such person in a recognizance to the next circuit court, with sufficient security, in a sum not less than one hundred dollars, nor more than five hundred dollars, to answer such accusation, and to abide the order of said court thereon; and on neglect or refusal to find such security, the justice shall cause him to be committed

J. P. shall issue warrant on complaint.

Complainant may be interrogated.

Examination to be in writing.

Bond to overseers of the poor

Overseers of the poor may prosecute reputed father.

Accused may be recognized or committed to jail

to the jail of the county, there to be held to answer to such complaint.

SEC. 4. If it shall happen at the time of holding such court, that the woman be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next court, at which the mother of said child shall be able to attend; and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

SEC. 5. Whenever such accused person shall plead not guilty to such charge, before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination before such justice shall be given in evidence; and the mother of such bastard shall be admitted as a competent witness, and her credibility left with the jury; *Provided always,* that no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would disqualify her from being a witness in any other case. On the trial of the issue, the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also, any variation in her testimony before the justice, and that before the jury, and also any other confession of her at any time, which does not agree with her testimony, or any other plea or proofs made on behalf of such accused person.

SEC. 6. In case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such sum or sums as the court shall order and direct, with payment of costs of prosecution; and moreover be liable to the suit of the complainant for damages; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall refuse or neglect to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain until he shall comply with the order of the court, or until such court shall, on sufficient cause shewn, direct him to be discharged.

SEC. 7. Whenever it shall happen, that the justice shall hear and determine a case, in the absence of the person charged as being the father of any illegitimate child, owing to the proper officer not being able to take him, or having been taken, has escaped from custody, it shall be the duty of the justice, within ten days after the trial, to certify to the circuit court a full and complete transcript of the case, on the filing of which in the clerk's office, it shall be the duty of the clerk to issue a warrant to the sheriff of his proper county, or to the sheriff of any other county, in this state, to which the person charged may have fled, commanding him to take said person into cus-

If the complainant be unable to attend the circuit court, a continuance may be had.

Plea of not guilty to be tried by a jury.

Complainant a competent witness.

On a verdict of guilty, the accused to give security, &c.

When def't is not taken, or shall have escaped, justice shall certify proceeding to cir. court.

Cl'k shall issue warrant to sh'ff.

Transcript shall be a lien.

tody to answer to said complaint. And from the filing of said transcript in the clerk's office, as aforesaid, it shall operate as a lien, upon the real estate of said defendant for the payment of the judgment which may be recovered against him: *Provided however*, that no judgment shall be rendered against such party accused until such person shall have had notice of the pendency of said complaint.

Person arrested may discharge himself by entering into recognizance.

SEC. 8. Any person taken into custody, by the sheriff, as above prescribed, may discharge himself from custody, by entering into a recognizance, with good security to be approved of by said sheriff in the sum of five hundred dollars, conditioned that he will appear at the next term of the circuit court, of the county in which said prosecution was commenced, to answer said complaint, and abide the order of the court therein. On his failing or refusing to find such bail, it shall be the duty of said officer to commit him to the jail of the county, there to be held to answer to said complaint.

On failure may commit to jail.

Court may order notice to defendant to be published.

SEC. 9. If the person charged should escape from the constable or sheriff after the service of the process; or if it shall appear to the satisfaction of the court that the person so accused has absconded after the issuing of said warrant, or the making of said complaint it shall be the duty of said court to order a notice to be published, at least three weeks, in a weekly newspaper printed in said county, if there be one, if not, then in such paper published in some county near thereto, notifying the defendant of the pendency of said suit, and that, unless he appear at the next term of said court, the same will be fully heard and determined in his absence.

Cl'k may issue execution after judgment upon order of court.

SEC. 10. If, after the hearing and determining of the case, as before provided, in the absence of the defendant, judgment should be rendered, by the court, against said defendant, for the support of said child, it shall be the duty of the clerk to issue an execution against the goods and chattels, lands and tenements of the defendant, for the full amount of the judgment so as aforesaid entered; and it shall be the duty of the sheriff, when he shall have made the money, as in the execution commanded, to pay the same over to the clerk of the county, whose duty it shall be to pay the same over to the overseers of the poor of the township, where the mother of said child shall live, taking from them a bond with sufficient security, conditioned that they will faithfully pay the same over to the person who may be charged with the care of said child, at such times and in such amounts, as the court may have determined; and in case of the death of said child, that they will refund to the father of said child, the same or such parts thereof as may not have been expended.

Money to whom paid.

Scire facias shall issue on forfeited recognizance.

SEC. 11. Whenever any recognizance, which shall have been entered into by any person charged with being the father of an illegitimate child, as provided for by this act, shall be forfeited by reason of the person not appearing to answer to said charge, it shall be the duty of the court to order a *scire facias* to issue against the sureties in said recognizance, com-

manding them to shew cause, at the next term of the court, why judgment shall not go against them for the amount of said recognizance.

SEC. 12. If, upon the return of said *scire facias* served, or two returns of not found, the said sureties shall fail to show cause why the same shall not be done, the court shall enter judgment against said sureties, in the same way and manner as they would have done against the principal, had he appeared and confessed himself to be the father of said child, so far as relates to the support of said child: *Provided*, that they shall in no case be made liable to pay more, for the support of the said child, than the amount of the penalty of said recognizance.

SEC. 13. In all cases where the defendant shall be adjudged to be the father of the child, the order for its maintenance shall be entered in the nature of a judgment, upon the record; the different instalments becoming due at the times the court may direct. The security for the performance of the order required by the sixth section of this act, shall be entered upon the record, in the nature of replevin bail; and whenever any of the instalments shall become due, and the same shall not be immediately paid, the same shall be collected by execution, against the principal and sureties, as in other cases.

SEC. 14. Whenever judgment shall be entered, by the court against the sureties, as is provided in the twelfth section of this act, they shall have the right to replevy the same, in like manner, in all respects, as the principal is allowed to do.

CHAPTER LII.

AN ACT concerning Insane Persons.

[APPROVED JANUARY 22, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That any bargain, sale, conveyance or act of any person or persons, in a state of insanity, shall be void and of no effect in law.

SEC. 2. When any circuit court in this state, shall receive satisfactory information that any person in their respective counties, having property, and is or have become insane, it shall be the duty of the said court, to direct the sheriff of the county to summon twelve intelligent, disinterested men of the county, impartially to inquire into the fact, and to appoint the time and place where such jury shall meet and inspect such insane person, and also to cause to come before them, such person as they may think proper, to give testimony as to the insanity of such person, and if the jury so summoned and sworn, shall decide from such inspection and testimony, that such person is insane, and not able to take care of his or her property,

C. court to app't guardians after a verdict of insanity.

the court shall proceed to appoint three suitable persons as guardians of the person and estate of such insane person; whose duty it shall be to take such care of the person and property of such insane person, as may be necessary for the safety and preservation of the same.

C. C. may order sale of property

SEC. 3. Whenever it may be thought necessary, the circuit court of the county wherein such inquest of insanity was held, upon proper representation, may direct and order the sale of the real and personal estate of such insane person, for the support of such insane person, his or her family, the payment of his or her debts, or for the improvement thereof; and generally to act and do what to them shall seem proper, for the benefit of the person or property of such insane person, consistent with law.

Judg'ts, executions, &c. after verdict of insanity suspended.

SEC. 4. As soon as it is determined by inquest as mentioned by the second section of this act, that such person is insane, it is hereby declared that all judgments, executions and suits pending against such insane person, shall be suspended until the appointment of a guardian or guardians; and then the same proceedings may be had against such guardian or guardians, whose appointment shall continue during the insanity of such insane person, to be recovered by the court for the recovery of the debts of such insane person, under the same rules, restrictions and regulations as are prescribed by the existing laws of this state against administrators and executors.

When insane persons shall be considered paupers.

SEC. 5. All persons insane, who have no property for their support, shall be entitled to all the benefits of the laws of this state, for the relief of paupers; and the overseers of the poor, and all other persons concerned, are directed to govern themselves according to the provisions of an act for the relief of the poor.

SEC. 6. All acts and parts of acts concerning insane persons, heretofore in force in this state, are hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPTER LIII.

AN ACT to provide for the Inspection of Salt, Beef, Flour, Pork and Tobacco.

[APPROVED FEBRUARY 17, 1838.]

Inspect'rs of salt Their duty.

Compensation.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be lawful for the board doing county business in any county in this state, when they think proper to do so to appoint an inspector, who shall hold his office during the pleasure of said board, whose duty it shall be to inspect all salt in barrels that may be offered for sale in such county, and shall brand the same on one end of the barrel, first, second

or third rate, agreeably to the quality such barrel may contain; for which inspection the owner or owners of such salt, shall pay to the inspector five cents for each barrel by him inspected.

SEC. 2. *Be it further enacted,* That if any person or persons, in any county where such inspector may have been appointed, shall offer for sale and vend any salt by the barrel, without being inspected and branded as is provided by the first section of this act, he, she or they, so offending, shall for every such offence, be fined in any sum not less than three, nor more than twenty dollars, before any court having competent jurisdiction, by presentment or indictment, for the use of the county seminary.

Sale without inspection prohibited.

Penalty.

SEC. 3. It shall further be lawful for the board doing county business in any county in this state, when they may think proper to do so, to appoint some suitable person, as inspector of flour, beef or pork in barrels, who shall hold his office for three years, and until a successor be appointed and qualified; and such inspector, before he enters upon the duties of his office, shall take the following oath or affirmation before some justice of the peace, a certificate of which shall be endorsed on the certificate of his appointment—"I, A B do swear, (or affirm as the case may be) that I will faithfully and impartially, according to the best of my skill and judgment, perform the duty of inspector of flour, beef and pork, according to the laws in force relative thereto."

Insp'tor of flour, beef and pork.

Oath of.

SEC. 4. That each inspector of any county in this state, shall on the application of such owner, owners or agents of flour, beef, or pork, intended for exportation in such county, and who may wish to have the same inspected, attend and inspect the same, and for every such inspection, he shall be entitled to receive three cents for every barrel of flour, and ten cents for each barrel of beef or pork; and the said inspector shall not be entitled to receive any more than the rates aforesaid, under the penalty of fifty dollars for every such offence, to be recovered in any court having cognizance thereof, one half to the use of the person prosecuting for the same, and the other half for the use of the proper county seminary.

Duty.

Compensation.

Extortion.

SEC. 5. That each barrel of flour so inspected, shall contain one hundred and ninety-six pounds of flour avoirdupois; and if intended for the first quality, shall be branded by the inspector "superfine;" and each barrel intended for the second quality, shall be branded "fine;" and each barrel intended for the third quality, shall be branded "middlings;" and in addition to the aforesaid brand, each barrel shall be branded "Indiana;" and for the inspection of flour, each inspector shall provide himself with a three-quarters of an inch barrel auger, with which each barrel shall be bored into, so as to satisfy himself of the quality of the flour. Each barrel of beef or pork inspected, shall contain two hundred pounds avoirdupois; and the best quality of beef shall be denominated "mess beef," and be so branded; and the second quality shall be denominated and branded "prime beef;" and the best quality of pork shall

Flour, how branded.

Beef and pork how branded.

Damaged.

be denominated and branded "mess pork;" and the second quality shall be denominated and branded "prime pork;" and the third quality shall be denominated and branded "Indiana cargo pork;" and when any such flour, beef or pork shall be found musty, sour, tainted, spoiled or otherwise unfit for market, the same by such inspector shall be condemned.

Co. b'd to app't
inspector of to-
bacco.

SEC. 6. That it shall be lawful for the board doing county business in any county in this state in which an inspector shall not have been appointed, qualified and in office under the law of this state, when they think proper to do so, to appoint an inspector who shall hold his office during the pleasure of said board, whose duty it shall be, if applied to by the owner or owners, his or their agent or agents to inspect all tobacco in hogsheads that may be offered for sale, or that may be grown and put up in hogsheads for sale or exportation, in such county, and shall brand the same on one end of the hogshead, "first," "second" or "third" rate, agreeably to the quality such hogshead may contain; for which inspection the owner or owners of such tobacco shall pay to the inspector such sum as may be fixed upon by the board doing county business in such county for each hogshead by him so inspected.

His duty.

Penalty for al-
tering brand.

SEC. 7. If any person or persons shall alter or erase any brand or mark of said inspectors, so placed on any barrel of salt, flour, beef, pork or hogshead of tobacco, he or they so offending shall, on conviction thereof, forfeit and pay the sum of fifty dollars for every such offence, to be recovered in any court having cognizance thereof, one half to the use of the person prosecuting for the same, and the other half to the use of the county seminary, wherein the inspection may have been marked as aforesaid.

This act to take effect and be in force from and after its publication.

CHAPTER LIV.

AN ACT regulating the Interest of Money in the State of Indiana.

[APPROVED FEBRUARY 1, 1831.]

Rate of interest
to be 6 per cent.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That creditors shall be allowed to receive interest at the rate of six per centum per annum, for all moneys after they become due, on bond, bill, promissory note, or other instrument of writing; on any judgment recovered in any court of law, now or hereafter to be established in this state, or on any order or decree of a court of chancery or probate, for the payment of a specific sum of money, from the day of signing such judgment, order or decree, until effects be sold or satisfaction be made; likewise on money lent; on money for the for-

bearance of payment whereof an express promise has been made for the payment of interest; on money due on the settlement of accounts, from the day of liquidating the accounts, between the parties and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge, or retained after demand of payment; and on money withheld by any unreasonable or [and] vexatious delay of payment.

SEC. 2. That no person or persons, body politic or corporate, shall on any contract, hereafter made, directly or indirectly take or receive for the loan or use, or forbearance of money, or on any contract for the payment of money, above the rate or value of six dollars for the loan, use, or forbearance, or on the contract for the payment of one hundred dollars for one year, and so proportionally for any greater or less sum, and for any longer or shorter time; unless the stipulation to pay a higher rate of interest be made in writing and signed by the party to be charged. But in no case whatever, shall any person or persons, body politic or corporate, take or receive, more than ten dollars for any such loan, use, or forbearance of money, or on any such contract for the payment of one hundred dollars, for one year, and so proportionally for any longer or shorter time, or for any greater or less sums.

Not to be 6 per
ct. unless it be
agreed in writing
to pay a higher
ratio, but which
in no case can
exceed 10 pr. ct.

SEC. 3. If any person either directly or indirectly shall demand or receive, any greater rate of interest than may be lawful for the use of any sum of money, the person so offending shall on conviction by indictment in the proper circuit court, pay a fine to the state of Indiana for the use of the county seminary of the county in which the offence shall be committed, double the amount of the excess of interest, so received above the amount by law allowed.

CHAPTER LV.

AN ACT to provide for a general system of Internal Improvements.

[APPROVED JANUARY 27, 1836.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That six persons shall be appointed by the Governor by and with the advice and consent of the senate, who, together with the present canal commissioners, shall constitute a board of internal improvement to serve for three years from and after their appointment; the first appointments shall, however, be divided into three classes, by lot, at their first meeting.*

B'd of int. imp't
how appt'd and
term of office.

*The mode of appointing commissioners changed to joint ballot of the general assembly: see "act to prescribe the mode of electing commissioners of the board of internal improvement," approved January 25, 1836.

Vacancies in canal board. The term of service of the first class shall determine at the expiration of one year, the second class at the end of the second year, and the third class at the end of the third year, so that one-third may be annually appointed so long as their services may be required, and shall be liable to be removed at any time by impeachment or joint resolution. The said canal commissioners thus constituted members of said board shall respectively hold their offices therein during the time for which they would have served as canal commissioners, and their vacancies shall then be filled in the same manner as is provided for the appointment of other members of said board in this section, and their service shall continue in like manner and be subject to like removal. The governor in making the nominations as above provided, shall, in addition to the qualifications for the discharge of the duties of the office, have regard to the local situation of the nominee, so that each work may be represented in said board by a suitable person residing as near as practicable thereto.

Each work to be represented.

Oath and bond.

Duty.

Quorum.

Compensation.

Duty of board.

SEC. 2. The board thus constituted shall be called the state board of internal improvement, shall take the same oath and give the same bond as now required by law of the canal commissioners. They shall locate, under the provisions of this act, and superintend the several works of internal improvement in this state, and hold semi-annual meetings, and as much oftener as they may deem necessary. Five members shall constitute a quorum, and they shall each receive as a compensation for their services the sum of two dollars per day for every day necessarily employed, and also an equitable allowance for travelling and other contingent expenses.

SEC. 3. In the meetings of said board they shall determine the general outline of the operations in relation to such works of internal improvement as may be authorized by law determining questions of importance submitted to them in relation to said works, and to assist in the examination of accounts and making reports to the general assembly, and as soon as any work or canal line shall be ready to be placed under contract the said board shall elect one of their members to serve as acting commissioner on said line, whose duty it shall be to superintend the same under the general direction and during the pleasure of said board. A record of the proceedings of said board shall be kept by them, as also an accurate account of the moneys expended on each route, as well as every other matter that may legally come under their supervision or control, by virtue of this act.

Works authorized, &c.

SEC. 4. The said board of internal improvement is hereby authorized and directed to adopt such measures as may be necessary to commence, construct and complete, within a reasonable time, the following public works, viz:

1st. The White Water Canal, commencing on the west branch of the White Water river, at the crossing of the National Road, thence passing down the valley of the same to the Ohio river, at Lawrenceburgh, and extending up the said

west branch of the White Water above the National Road as far as may be practicable; also a connexion between the said White Water canal and the Central canal, by a canal, if practicable, if not by a rail road, to commence at same point near the National Road, thence to be continued to some suitable point on said Central canal in Madison or Delaware counties, as the same may be found most practicable and best calculated to promote the interests of the state; and for the construction of said works the sum of one million four hundred thousand dollars is hereby appropriated: *Provided however*, that if the state of Ohio shall ultimately refuse to grant leave for the construction of that part of the White Water canal which passes through her territory, the said board shall construct a rail road from some point near Harrison to Lawrenceburgh, keeping it wholly within the territory of this state, in lieu of the canal as now located between those points, and pay for the construction of said road out of the moneys appropriated for the construction of said White Water canal.

2d. The Central canal, commencing at the most suitable point on the Wabash and Erie canal between Fort Wayne and Logansport, running thence to Muncietown, thence to Indianapolis, thence down the valley of the west fork of White river to its junction with the east fork of said river, and thence by the most practicable route to Evansville on the Ohio river: *Provided however*, the said board of internal improvement may, if it shall be found most practicable and conducive to the interests of the state, select the lower or Pipe creek route in the line north from Indianapolis; then and in that case a feeder shall be made to commence at Muncietown and communicate with said Central canal at some convenient point on the same, which feeder shall be of equal size and capacity with the main canal, and made equally convenient for the purposes of navigation and be constructed simultaneously with the said main canal, and in all other respects provided for in like manner with the same. For the construction of which Central canal and navigable feeder, the sum of three millions five hundred thousand dollars is hereby appropriated.

3d. An extension of the Wabash and Erie canal from the mouth of Tippecanoe river down the valley of the Wabash to Terre Haute, and thence by the route as surveyed on Eel river, so as to connect with the Central canal at the point designated in said survey, or else by the most practicable route from Terre Haute so as to connect with the Central canal at or near the mouth of Black creek in Knox county, or at some intermediate point between said points as shall, on further survey and examination of said route, be found most conducive to the public good. For the construction and completion of the continuation or extension of said Wabash and Erie canal the sum of one million three hundred thousand dollars is hereby appropriated.

Extension of W. & Erie canal.

4th. A rail road from Madison through Columbus, Indianapolis and Crawfordsville to Lafayette, to be called the Ma-

Madison & Lafayette railroad.

dison and Lafayette rail road, to construct which the sum of one million three hundred thousand dollars is hereby appropriated.

McAdamized
road from N. A.
to Vincennes.

5th. A McAdamized Turnpike road from New Albany through Greenville, thence as near to Fredericksburgh as shall be found practicable, having in view the expense of construction and public accommodation, through Paoli, Mount Pleasant, and Washington to Vincennes; for the construction of which the sum of one million one hundred and fifty thousand dollars is hereby appropriated.

R. road or turn-
pike from Jeffers-
onville to
Crawfordsville.

6th. And the said board is hereby authorized and directed to cause a re-survey of the route from Jeffersonville via New Albany, Salem, Bedford, Bloomington, and Greencastle to Crawfordsville, to be made before the first day of October next, and if upon such survey so made it shall be found practicable to construct a rail road on said route, the sum of one million three hundred thousand dollars is hereby appropriated for its construction. But if, after such survey and examination shall have been made, the construction of the said rail road shall be deemed impracticable, it shall be and is hereby made the duty of said board to construct a McAdamized road on the route aforesaid; and in that event the same amount is hereby appropriated for its construction, to wit: the sum of one million three hundred thousand dollars; and then and in that event the said board shall either commence said road at Salem, or make such arrangements as may be deemed expedient and consistent with the interest of the state with the Salem and Ohio Turnpike company: *Provided however*, that said board shall not make any arrangements with said company or otherwise which shall have the effect to divert said road from the most direct and practicable route for the same between Salem and New Albany.

Improvement of
the Wabash.

7th. The sum of fifty thousand dollars is hereby appropriated for the removal of obstructions to navigation in the Wabash river between its mouth and the town of Vincennes; which said sum of fifty thousand dollars shall be part of the first loan effected under the provisions of this act, to be expended under the direction of the said board of internal improvements for the removal of said obstructions as soon as the same can be done in a manner best calculated to promote the public interest.

Survey &c. of a
canal or rl. road
from Ft. Wayne
to lake Michigan

8th. And the said board are hereby authorized and required to cause, during the present year, a survey and estimate to be made of a canal if practicable, if not a rail road, from the Wabash and Erie canal at or near Fort Wayne, by the way of Goshen and South Bend, and Laporte, if practicable, to Lake Michigan, at or near Michigan city, to be called the Erie and Michigan canal or rail road; said route to be kept within the limits of this state. For the commencement of which, within ten years, at the discretion of the said board of internal improvement, and the final completion of the same, the faith of the state is hereby irrevocably pledged; and the money neces-

sary to construct the said work shall be obtained in the same manner as is provided for other works in this act.

SEC. 6. The said board, in constructing that part of the Wabash and Erie canal which lies between Lafayette and Terre-Haute, shall have power to connect by lockage and otherwise the canal with the Wabash river on section number forty-seven, and at such other places where the interest of the state and the convenience of its citizens shall in their opinion, be promoted by such connexion. And the said board shall also be authorized and required, upon application being made, to permit any county or association of individuals to tap any or either of the canals herein mentioned and provided for, at any point upon said canals by side cut canal or canals, whenever, in the opinion of the said board, the navigation of said canal or canals shall not be injured thereby.

Duty of board in
relation to the
Wabash & Erie
canal.

SEC. 7. For the purpose of constructing the several works authorized by this act, there shall be a fund for internal improvements, which shall consist of all the moneys which may be raised by the sale of stocks, or in any other manner by virtue of the loans authorized by law, and of all appropriations which may have been made, or which may hereafter be made for those objects, all the proceeds or moneys which may be derived from the tolls and rents of said works, and of all grants or donations which may be received from individuals to aid in their completion, together with all the profits and interests which may accrue from their construction in any manner whatever.

Internal im-
provement fund.

SEC. 8. The said canal fund commissioners are hereby authorized and required, on behalf of the state to contract with any individual, company, or corporation, at such times as may be directed by the board of internal improvement for a loan or loans, from time to time, in all not exceeding the sum of ten millions of dollars, on a credit of twenty-five years, said loan or loans to be at a rate of interest not exceeding five per cent. per annum, and to be so negotiated that the same may be drawn and bear interest at any time, as early as practicable, when they may be advised by the board of internal improvements that it will be required for the progress of any of the works of internal improvement to which the same has been appropriated by this act, and the said commissioners of the canal fund shall issue for such loans transferable certificates of stock in the name of the state, which when signed by them shall be valid; and to facilitate the purposes herein contemplated the commissioners of the canal fund shall have power to make such arrangements relative to obtaining loans, the payment of interest thereon, the transmission and deposits of money, as they may deem conducive to the interest of the state.

Loan authori'za

SEC. 9. For the punctual payment of the interest and final redemption of the principal of all sums of money which may be borrowed under the provisions of this act, there shall be and are hereby irrevocably pledged and appropriated, the canals, rail and turnpike roads, with the portions of ground thereunto appertaining and privileges thereby created, and the rents and profits of the water power thereof, together with the nett pro-

Faith of the
state pledged for
the payment of
loan.

ceeds of tolls collected thereon; the sufficiency of which, for the purposes aforesaid, the state of Indiana doth hereby irrevocably guarantee.

Loan authorized
for Wabash and
Erie canal.

SEC. 10. The said canal fund commissioners are hereby authorized to negotiate a loan not exceeding the sum of five hundred thousand dollars in addition to the loans heretofore authorized by law for the canal fund, the proceeds of which shall be applied to finish that part of the Wabash and Erie canal which lies between the Ohio state line and the mouth of the Tippecanoe river, and within the lands granted by Congress, to aid in the construction of said work, which authority to contract said loan on the credit of the state shall be as ample and governed in every respect by the same provisions as have governed the loans which have heretofore been authorized by the several acts of this state for that purpose; and for the punctual payment of the principal and interest on said loan or loans the said canal when constructed, its tolls, its interest and profits derived therefrom, and the proceeds of the canal lands are hereby pledged, the sufficiency of which to pay the interest and principal of said loan or loans, as the same shall become due, the state hereby guarantees.

Dist't accounts
shall be kept of
receipt and dis-
bursement on
that part of the
W. & E. canal
east of Tippeca-
noe.

SEC. 11. Distinct accounts shall be kept of all disbursements of money which have been or which shall hereafter be made for the construction of that part of the Wabash and Erie Canal which lies eastwardly of the Tippecanoe river within the grant of the canal lands, and the amount of such expenditures shall be charged to and paid out of the canal fund, and an account also kept of the tolls which may be received on that part of the canal, in order that their amount, as well as the proceeds arising from the sale of the canal lands, may be strictly applied to the payment of the canal fund for which, by various acts of the General Assembly, they have been specifically pledged.

Board to meet &
appoint pre't &
sec'y.

SEC. 12. The members composing the board of internal improvement shall meet as soon after their appointment as convenient, and choose one of their members to be president of said board, and appoint a secretary, whose duties and compensation they shall regulate. The president of the board shall have power to call meetings of the same when in his opinion the public interest may require it, and said board shall have authority to adjourn from time to time to meet at any other place they may think proper, and have power to employ such engineers, agents, and other assistants as the interest of the state shall, in their opinion, demand to enable them to discharge the duties required of them by this act, and to pay such engineers, agents, and assistants for their services such sums as in their opinion may be a reasonable compensation for the duties which they may perform.

Pres't may call
meetings.

Power of board.

SEC. 13. The said board of internal improvement shall be authorized to give drafts or checks from time to time, payable to such persons and at such places, on the commissioners of the canal fund, and receive from them all such sums of money as may be necessary for the prosecution of the works contemplated by the acts of the General Assembly in relation to this sub-

Bo'd authoriz'd
to draw on fund
com'rs, &c.

ject, under such rules, regulations and restrictions as the said commissioners of the canal fund may deem necessary for its security and proper application, and the said board of internal improvement shall cause the same to be expended in the most economical manner on the works of improvement authorized by this act, at such times and places and in such sums as they may deem most conducive to the interest of said works; to establish reasonable tolls and adopt all measures necessary for the collection and payment thereof to the commissioners of the canal fund, and report to the legislature at each session thereof the state of said works, with an account of the expenditures, together with their proceedings under this act, and recommend such measures as they may think advisable to promote the objects intended by this act, and likewise, when called upon by the governor, to report to him from time to time such information as he may require.

Report to legis-
lature annually.

SEC. 14. The board of internal improvement is hereby authorized to put under contract, and construct that part of the Wabash and Erie canal which lies between the Tippecanoe river and the Ohio state line, and any and all such portions of the several works as are authorized by this act, to make such minor changes in the lines already located, such re-surveys, and at such times and places as they shall deem most conducive to the public interest, having regard always to economy and the most profitable and early receipt of tolls.

Works to be put
under contract,
&c.

SEC. 15. The commissioners of the canal fund shall make report to the auditor of public accounts for their receipts and disbursements growing out of the provisions of this act, in the same manner as they are now required by law in relation to canal and other funds under their direction; and the board of internal improvements shall also render to the auditor an account of its disbursements in the same manner as is now by law required of the commissioners of the Wabash and Erie canal; and for the increased duties of the auditor of public accounts he shall be allowed, for clerk hire, a sum equal to the compensation paid by the commissioners of the canal fund to their secretary.

Reports to be
made to auditor.

SEC. 16. It shall be lawful for the board of internal improvement, and each of the members thereof, by themselves, or by any superintendent, agent, or engineer employed by them, to enter upon, and take possession of, and use all and singular any lands, streams and materials of any and every description necessary for the prosecution and completion of the improvements contemplated by this act; and to make all such canals, feeders, dams, locks, rail roads, turnpike roads, and other works as they may think necessary for making said improvements, avoiding, in all cases, unnecessary damage or injury to the proprietors.

Compensation
to auditor.

Board may take
materials, &c.

SEC. 17. In all cases where persons may feel aggrieved or injured by the construction of any of the works contemplated by this act, or by the use of materials for the same, the person

Claims for dam-
ages.

or persons so feeling aggrieved or injured, shall make out a written statement of the cause of such complaint, particularly describing the nature of the injury and the interests of the complainant or complainants therein, and deliver the same to the member of the board of internal improvement having the superintendence of that part of the public works which is supposed to occasion such injury, or under whose superintendence said supposed injury was committed, which written statement shall, by said superintendent be copied into a book to be kept for that purpose; and said superintendent shall lay said complaint before the board of internal improvement at their next semi-annual meeting thereafter, which shall be filed among the papers of said board, and said board shall thereupon refer the subject matter of said complaint to three disinterested persons, as appraisers, to be named and appointed by said board of internal improvement, to appraise and assess the damages of such complainant or complainants. The said board shall fix the time or times and place or places for said appraisers to meet, and cause reasonable notice of the same to be given to such complainant or complainants of the time and place of the meeting of said appraisers, and when said appraisers are so met, shall be sworn to do impartial justice between the state and complainant or complainants, according to the best of their understanding, and shall bring before them, and either of them shall swear such witnesses as they may think justice requires; and their decision and award they shall report to the said superintendent to whom the complaint was made, or his successor, and by him the same shall be copied into a book procured for the purpose, which decision of said appraisers shall be final, unless either party shall think proper to appeal to the circuit court of the county where such cause of difference arose, within thirty days after the decision and award of said appraisers, and when such appeal is taken it shall be governed by the same rules and regulations as appeals from judgments of justices of the peace, except no bond shall be required of the state in case she may be the supposed injured party; and on any appeal being taken, the member of the board of internal improvement having possession of the books containing the said complaint, and the award of said appraisers, shall take the necessary appeal bond, sufficient in his opinion, to cover double the amount of the costs; and shall also make out and certify a transcript of said complaint, together with the award of the appraisers, in the same manner as transcripts are required to be certified by justices of the peace, in case of appeals; and in all cases in the assessment of damages as in this section provided for, the appraisers, the court, or jury shall take into consideration the benefits resulting to such complainant from the construction of the works which occasion the supposed injury; and the damages so assessed by said appraisers, when no appeal is taken or the amount settled by the judgment of a judicial tribunal, shall be paid to the party injured by the board of internal improvement: *Provided*, that no claim shall be recovered or

paid by said board unless the application therefor be made as herein provided within two years next after the property shall have been taken possession of as aforesaid: *Provided*, that no such appraiser or juror shall be the owner or lessee of any real property situated on or within one mile of the line of said work of improvement for damages for the construction of which such claim or complaint may be made.

SEC. 18. The said board of internal improvement shall, by any one or more of its members, proceed in due time along the lines of the said several works herein contemplated, and take from the several individuals through whose lands any of said contemplated works may pass, or which may be contiguous thereto, releases to the state of the necessary land, timber, stone, sand, or other material, for the purposes of constructing any or all of said works, or for repairing the same, and for building-ground for the construction of mills or other hydraulic machinery to be propelled by the water power of any such canal, and also to enter and purchase, on behalf of the state, any lands belonging to the general government or to individuals contiguous to such work for the same purpose, and file the same in the office of the secretary of state; which releases shall operate so as to vest in said state a full and complete right to enter upon, use, and take the same at any and all times thereafter.

SEC. 19. Said board, or any member as aforesaid, in taking releases as aforesaid, is hereby authorized, in consideration of any privilege granted by individuals to the state of the right of way or other privilege, to contract with such individual, on behalf of the state, to erect across said canal any bridge or bridges for the benefit of such individual and the public.

SEC. 20. In erecting any bridge or other structure across any river or stream, for the purpose of carrying any canal or rail-way across such river or stream, the said board shall cause to be constructed, in addition to the usual structures necessary for a canal or rail-way, a way for wagons and carriages, if they shall deem it expedient.

SEC. 21. The appraisers appointed by the board of internal improvement to assess damages in pursuance of the provisions of the sixteenth section of this act shall each be allowed the same compensation per day as is or shall be allowed to a member of the board of internal improvement, and so much of the laws of this state now in force as provides for erecting, continuing, or compensating a state board of appraisers be and the same is hereby repealed.

SEC. 22. So soon as the site of any lock, dam, or other structure on any or either of the canals or feeders as authorized by this act shall be determined on, at which there will be any water power created, it shall be the duty of the board of internal improvement to procure by donation or purchase, on behalf of and for the use of the state, the necessary ground for the profitable use of such water power, provided the same can be pro-

cured at what said board may consider a fair or reasonable price.

Water power,
&c. to be leased.

SEC. 23. Whenever in the opinion of the board of internal improvement there shall or may be surplus water, over and above the quantity required for navigation, in either of the canals or feeders authorized by this act, or at any dam erected at the expense of the state; and where the water which shall or can be passed around any lock from one level to another without injuring the navigation, may be sufficient to propel hydraulic machinery, the board of internal improvement is hereby authorized to cause such surplus water, with such portions of ground belonging to the state as may be necessary to its use, to be leased to the highest bidder for hydraulic purposes, under such conditions and restrictions as they may deem necessary and proper for the interest of the state, but no water power shall be leased unless the ground on which it is proposed to be used shall be the property of the state.

Reservation in
the lease &c.

SEC. 24. Every lease, grant, or conveyance of water power, made in pursuance of this act, shall contain a reservation or condition that the state, by its authorized agent or agents, may at any time reserve the right to use the water or any part thereof, whenever it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with the convenient navigation of the canal near which the same may be situated. And whenever such privilege may be resumed in whole or in part, the sum paid therefor, or such portion thereof as may upon equitable principles be determined upon, agreeably to the stipulations of the lease or deed of conveyance aforesaid, shall be refunded to the purchaser or lessee, his or their heirs or assigns.

Provisions in re-
lation to L. & I.
rail road co.

SEC. 25. That it shall be lawful for the Lawrenceburgh and Indianapolis rail road company to receive in payment of stock therein, to the extent of five hundred thousand dollars, the bonds of stockholders payable to said company in twenty years from the 1st day of January, 1836, with interest semi-annually at the rate of six per centum per annum, payable at some one of the branches of the state bank of Indiana, together with mortgages on real estate of the full value of the real sum intended to be covered thereby exclusive of perishable improvements, which bonds and mortgages may be assigned and transferred to the state of Indiana by order of the board of directors of said company by endorsement thereon, signed by the president and attested by the secretary of said company in form following, viz: "The within is hereby assigned for value received to the state of Indiana."

SEC. 26. That on receiving a transfer of such bonds and mortgages, and the delivery thereof to the treasurer of state for the use of the state, or any amount thereof, not less than one hundred thousand dollars, it shall be the duty of the treasurer of this state to deliver to said company the state bonds

payable to bearer in twenty-one years from the said first day of January, 1836, bearing five per cent. interest, payable semi-annually at such place or places as shall be agreed upon between said treasurer and said company, to an amount equal to the amount of the bonds and mortgages so transferred to the state, which said state bonds shall be of the like description and signed in the same manner, as near as may be, as the bonds authorized to be issued for the bank loan.

SEC. 27. That before said treasurer shall deliver said state bonds it shall be his duty to be satisfied that the bonds and mortgages so transferred to the state shall cover real estate, exclusive of perishable improvements, to the full value of the sums expressed therein free of all incumbrances, and for the better ascertainment thereof the said treasurer is hereby invested with the same powers and authority as is given to the treasurer of state in the fifth, sixth, and seventh sections of an act entitled, "an act to authorize the loaning of the seminary funds," approved January 24th, 1828.

SEC. 28. That said bonds so to be given by stockholders shall contain this further condition, that the penal sum therein expressed shall become payable on the failure to pay any of the semi-annual instalments of interest, and in such case that such bond may be forthwith put in suit and the mortgage accompanying the same forthwith foreclosed, and that the court rendering judgment thereon shall, in addition to the ordinary cost of suit and damages, add five per centum for the expense of collecting.

SEC. 29. That so long as said company shall regularly pay the interest on said state bonds issued for their benefit one month before the same falls due, by depositing the amount thereof to the credit of the fund commissioners, (or such other agent as may be appointed) in any one of the branches of the state bank of Indiana, it shall and may be lawful for said company to have, collect, and receive the interest falling due on the several bonds which may have so been assigned to the state.

SEC. 30. That whenever the principal and interest due on any such bond and mortgage shall be paid up (and which said treasurer is authorized to receive at any time and pay over to the said fund commissioners) said treasurer shall give up such bond and mortgage to the person entitled thereto, acknowledging satisfaction of the same on the back of such mortgage before some proper officer, the recording of which in the records of the proper county and where said mortgage was recorded, shall fully and entirely discharge such mortgage.

SEC. 31. That it shall be the duty of said company to defray all expenses that shall or may accrue in recording said mortgages, paying said commissioners that may be appointed to value said mortgaged premises, and to examine the title thereof, together with the compensation of said treasurer, and such commissioner and treasurer shall be respectively entitled

to the same compensation as is allowed by the eighth and seventeenth sections of the act before referred to.

SEC. 32. The said company shall pay a bonus to the state of one half of one per centum on the amount of bonds issued by the state, as herein above provided, which bonds shall be paid to the treasurer of state, as such bonds may be cashed.

Madison company.

SEC. 33. That the Madison, Indianapolis and Lafayette rail road company shall have the privilege of joining said Lawrenceburgh and Indianapolis rail road company with their works, at Napoleon, or some other point, to be selected by said company.

SEC. 34. That the Lawrenceburgh and Indianapolis rail road company shall be bound to construct the rail road from the point of intersection to Indianapolis, agreeably to the provisions of their charter, and the Madison, Indianapolis and Lafayette rail road company shall be jointly interested in the road from the point of intersection to Indianapolis, the said Madison, Indianapolis and Lafayette rail road company paying one half of all the expenses incurred by said Lawrenceburgh and Indianapolis rail road company in the construction of the same, together with one half the bonus required to be paid by said Lawrenceburgh and Indianapolis company to the state, in the twenty-eighth section of this act, and one-half of all the expenses necessarily incurred by said company in procuring the money on the state bonds, at the same time that said Lawrenceburgh and Indianapolis company shall have to pay the same.

SEC. 35. The Madison company shall procure bonds of the stockholders in their company to the amount of two hundred and fifty thousand dollars, which said bonds shall be of the same tenor and date, bearing like interest, and secured in like manner with the bonds that may be given by the stockholders in the Lawrenceburgh and Indianapolis rail road company, said bonds to be made payable at such times and places as will meet the payments of the Lawrenceburgh and Indianapolis company to the state; and the said bonds of the Madison company shall be assigned to the said Lawrenceburgh and Indianapolis company, in the same manner that the bonds of the latter shall or may be assigned to the state; which said bonds, so transferred shall be received by the Lawrenceburgh company from the Madison company in payment of that amount on the cost of construction of said road from the point of intersection to Indianapolis.

SEC. 36. The said bonds, so to be given by the stockholders in the Madison, Indianapolis and Lafayette rail road company, shall contain the further condition that the penal sum therein expressed shall become payable on the failure to pay any one of the semi-annual instalments of interest, and in such case that such bonds may be forthwith put in suit, and the mortgages accompanying the same forthwith foreclosed; and that the court rendering judgment thereon shall, in addition to the ordinary cost of suit and damages, add five per cent. for the expense of collecting.

SEC. 37. That if the Madison, Indianapolis and Lafayette rail road company shall fail to furnish the bonds above named in manner and form as above provided for, within six months after the bonds of the state for five hundred thousand dollars shall have been obtained by the Lawrenceburgh and Indianapolis rail road company, the said Madison company shall not have the right of becoming joint proprietors in any part of said road, nor shall they enjoy any privileges on said road north of the point of intersection, aforesaid, but all the rights, privileges and immunities belonging or in anywise pertaining to said road, shall rest wholly in the said Lawrenceburgh and Indianapolis rail road company.

SEC. 38. That the said companies shall commence the construction of a rail road, from some convenient point on said road to Rushville, within one year from the time the Lawrenceburgh and Indianapolis rail road company, shall have completed their road from Lawrenceburgh to Greensburgh, and shall complete the same within three years from that time.

R. road to Rushville to be constructed by said companies.

SEC. 39. That all the foregoing sections which relate to the Madison, Indianapolis and Lafayette company, and the Lawrenceburgh and Indianapolis company, joining and acting together, shall be laid before the directors of said companies respectively, and if they agree to the same, by an order made on their records by their respective boards of directors, the same shall stand as a part of their charters.

Ratification by b'd of directors.

SEC. 40. That if the said Madison, Indianapolis and Lafayette company shall reject the above provisions as a part of their charter, then and in that case the Lawrenceburgh and Indianapolis company may construct their work as above provided, and shall construct the above named branch to Rushville within the above specified term of three years from and after the time the said company shall have completed their road from Lawrenceburgh to Greensburgh. That in case the last named company shall reject the same, and not consent thereto, then and in that case, they shall forfeit all right or benefit arising from the state bonds as above provided.

SEC. 41. That the Madison company shall not be compelled to pay interest on any funds used in the construction of said road except it be expended on that part of the road which lies west and north of the point of intersection, nor shall they be called on to pay any interest on the notes transferred until the funds are procured and ready to be applied on said portion of the road.

SEC. 42. For the commencement and completion of the several works of internal improvement, contemplated by this act, so soon as the interest of the state will justify, the faith of the state is hereby irrevocably pledged.

Faith of state pledged for the commencement & completion of the works.

SEC. 43. Should any member of said board of internal improvement or engineer employed in the construction of any works contemplated by this act, purchase or receive by grant or lease, directly or indirectly, (otherwise than by descent or devise) any interest in any real estate, situate within two miles

Restrictions on the board, &c.

Persons ineligible to appointment on board.

Public act.

from the line of either of said public works for a longer term than two years during his term of office, it shall work as a forfeiture of said office. No member of the senate or of the house of representatives, or any state officers, holding their offices, either by the appointment of the governor or by joint ballot of the two houses of the general assembly, shall be eligible to an appointment as a member of the board of internal improvement during the time for which he may have been elected.

SEC. 44. This act shall be taken and considered a public act, and shall be favorably and liberally construed for all beneficial purposes, and shall take effect and be in force from and after its passage.

AN ACT amendatory of an act entitled "an act to provide for a general system of Internal Improvement," approved January 27, 1836.

[APPROVED FEBRUARY 6, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the board of canal fund commissioners shall hereafter be designated and known by the name of the fund commissioners of Indiana.

Loans how made

SEC. 2. The said fund commissioners in all future loans to be negotiated by them under the act to which this is an amendment, shall be, and they are hereby authorized to issue transferable certificates of stock in the name of the state of Indiana, at a rate of interest not exceeding six per centum per annum, and shall have power to make such arrangements relative to making loans, the payment of the interest accruing thereon, the transmission and deposit money, as they may deem conducive to the interest and welfare of the state.

Compensation to comm'r.

SEC. 3. The said fund commissioners shall be allowed hereafter as a compensation for negotiating all loans of the state, superintending said fund and its disbursement, and discharging other duties required of them by law, each of them shall be allowed the sum of two dollars for each day so employed, together with an equitable allowance for travelling, and other necessary contingent expenses.

Am't of money taken from Wabash canal fund

SEC. 4. The said fund commissioners are hereby directed to ascertain the amount of money taken from the Wabash and Erie canal fund to make surveys of rail roads and other public works authorized by the general assembly, and to refund the same out of the fund for internal improvement.

Repeal.

SEC. 5. That so much of the second section of the act entitled "an act relative to the commissioners of the canal fund," approved February 8, 1836, as requires the board of internal improvement to settle and account with the fund commissioners for all moneys by them received, on or before the first Monday in December annually, is hereby repealed, and the said board of internal improvement are hereby required to close all their accounts on or before the thirtieth day of November,

in each year, and shall settle and account with the fund commissioners and make full report of the same to the legislature on or before the third Monday in December following.

Wabash canal.

SEC. 6. That so much of the Wabash and Erie canal as lies west of the mouth of Tippecanoe, be, and the same is hereby called and designated as the Wabash canal, and the said fund commissioners are hereby authorized to charge to the account of the Wabash canal all such sums of money as may be required for the construction of so much of the Wabash and Erie canal as lies west of the mouth of Tippecanoe.

Rate of interest on bonds.

SEC. 7. That the fund commissioners be, and they are hereby authorized to issue bonds, bearing interest at a rate not exceeding six per centum per annum, for the purpose of procuring the necessary funds to establish the twelfth branch of the state bank of Indiana, as is provided for in the act establishing said bank: *Provided*, that the said fund commissioners shall not make a loan for the establishment of the twelfth branch bank, in case the bank should accept and receive the surplus revenue set apart for bank purposes.

This act to take effect and be in force from and after its passage.

AN ACT supplemental to an act entitled "an act to provide for a general system of internal improvement," approved January 27, 1836.

[APPROVED FEBRUARY 3, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the board of internal improvement are hereby vested with full power upon the rail or McAdamized turnpike road provided for in the sixth section of an act entitled "an act to provide for a general system of internal improvement," approved January 27, 1836, to make surveys, examinations, and estimates, between the points named on said road line, whenever in the opinion of said board the interest of the state may require it, and after making such surveys, examinations and estimates, said board shall have power to adopt any route that may be most conducive to the interest of said state: *Provided*, that nothing in this act shall be so construed as to authorize the board to adopt such route as will change the character of the work from a rail to a McAdamized road, if the said board shall determine on making a rail road.

Discretionary powers of board as to certain routes.

SEC. 2. This act to be in force from and after its passage.

AN ACT to amend an act entitled "an act to provide for a general system of internal improvement," approved January 27, 1836.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the acting commissioner on any of the public

Timber to be obtained by contract works authorized in the act entitled "an act to provide for a general system of internal improvement," approved January 27th, 1836, or such person as may at any time be appointed for that purpose, shall in all cases when it becomes necessary to take timber or other materials for the construction of any of the works authorized by the act above referred to, to obtain the same by contract, at not to exceed a schedule of prices which shall be established by the board of internal improvement: and it is hereby made the duty of said board to establish a schedule of prices to be paid by the state for timber and the use of stone quarries necessary to the construction of the public works.

Schedule of prices to be fixed.
Requisitions to be made when timber cannot be had by contract.
 SEC. 2. In all cases where timber cannot be obtained, by contract as above provided, or with the consent of the owner of the land, then and in that case, it shall be the duty of said acting commissioner or person acting in behalf of the state, to make a requisition for such timber, on lands of individuals, within a reasonable distance of the work to be constructed; which distance shall be regulated by the rules and restrictions hereafter prescribed.

Distance from which timber shall be taken.

SEC. 3. The distance or district from which requisitions of timber shall be made, shall be determined as follows, to wit: the quantity that may be required in any one portion or vicinity of the public works, shall be divided into three classes or quantities: that is, the lesser quantity, that may be required in any particular vicinity, shall be the first class; a greater or medium quantity required as aforesaid, shall be the second class; and in requisitions for the first class or quantity, the distance or boundaries from which such requisitions shall be made, shall not be less than two miles, nor more than three miles, in each direction from the place where required; and of the second class the bounds shall not be less than three miles and not exceed four miles, as aforesaid; and for the largest quantity, the bounds of the requisition, shall not be required to exceed six miles: and in all cases the requisitions shall be made in just and equal proportions, as near as conveniently can be determined from each tract of land, agreeably to the quantity owned by each individual, in accordance with the limitations above prescribed.

Estimate of timber to be furnished.

SEC. 4. It shall be the duty of the resident engineer, to furnish the acting commissioner, or person employed to contract for timber on the public works, an estimate of the quantity of timber that may be required, in cases where requisition of timber becomes necessary, and also the bounds from which the same is required in accordance with the provisions of the preceding section: and the commissioner or other person acting for the state, shall be governed accordingly: and in all cases such timber and materials obtained, on requisition as above provided, shall be paid for by the acting commissioners, at and in conformity with the schedule of prices that shall be established by the board of internal improvement as herein provided: and in all cases the owner of the land shall have the right to designate the particular portion or part of his land from where such requisitions of timber shall be taken.

How timber to be paid for.

SEC. 5. In cases where any individual shall feel himself aggrieved, by requisition made for timber or materials, and shall not deem the prices established in the case a sufficient remuneration for the same, such individual shall file with the acting commissioner, a written statement of such injury or damage, upon the reception of which, the said commissioner shall appoint, on the part of the state an appraiser; a copy also, of said complaint, shall be filed by such complainant with the clerk of the circuit court of the county in which the damage complained of, shall have happened; which board, on the reception of such complaint, shall also appoint an appraiser; which appraisers so appointed, after having taken an oath, (before some person authorized to administer the same) faithfully and impartially to discharge the duty required of them as such appraisers shall proceed, as soon as convenient, to value and assess the damage or injury received by such complainant; which valuation or assessment, shall be paid by the acting commissioner, in full of such damage; and in cases where such appraisers shall not be able to agree, they shall appoint a third person, to be approved of by both; who after taking an oath, as required of the appraisers, shall act as umpire in such disagreement.

SEC. 6. If any complainant as above, shall be dissatisfied with the award of the appraisers such complainant shall have a right to an appeal to the circuit court, as is provided in the seventeenth section, to the act to which this is amendatory: *Provided*, that in case of appeal, if the complainant should not obtain a higher award of damage, than shall have been allowed by the appraisers, such complainant shall be liable for all costs of such appeal.

SEC. 7. The appraisers that may be appointed, under the provisions of this act, shall each receive two dollars per day for their services while necessarily employed as such, to be paid by the acting commissioner, on their account, by them officially certified to him; and in selecting appraisers no person shall be capable of acting as such, who shall in any manner be interested, or may have claims for damages against the state unsettled, or that may reside within the bounds from which requisitions of timber and materials may be made under the provisions of this act.

SEC. 8. In all cases where individuals, under pretence of taking timber or other materials for the public works, shall take such materials for other purposes, or shall apply such materials when taken, to other purposes, than public use, or shall sell them for private gain, such individual, so offending, on conviction before any court having competent jurisdiction, shall be fined in a sum equal to fourfold the value of the timber or other materials, so misapplied or disposed of, and moreover be liable to an action of trespass in behalf of the person whose property shall have been so misapplied.

SEC. 9. This act shall embrace all cases in which damage or compensation is claimed for timber heretofore taken for the

have been taken use and construction of the public works as fully as the cases that may happen hereafter.

AN ACT to amend an act entitled "an act to provide for a general system of internal improvement," approved January 27, 1836.

[APPROVED JANUARY 25, 1838.]

Road from Jeffersonville to Crawfordsville a McAdamized road.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the road authorized to be made by the sixth section of the act to which this is an amendment, from Jeffersonville to Crawfordsville shall be a McAdamized road, and that the state board of internal improvement shall be, and they are hereby required on or before the 20th day of October, eighteen hundred and thirty-eight, to cause a survey to be made upon that part of said road lying between Bloomington and Greencastle by the way of Spencer the seat of justice of Owen county: and after such survey aforesaid shall have been made, Spencer shall be a point on said road line if practicable: *Provided however*, that in locating said road from the town of Spencer to Greencastle (if the interest of the state is not injured thereby,) the same shall be made on the former located route so far as the same may have been let or put under contract between the National road and Greencastle: *And provided further*, that nothing in this section shall be so construed as to change that part of said road which lies between Jeffersonville and New Albany from a rail to a McAdamized road, but it shall be the duty of the board of public works to construct a rail road between those points, at as early a period as may be consistent with the public interest.

Spencer made a point.

R. road from Jeffersonville to N. Albany.

Com'r may compound with contractor.

SEC. 2. And the board shall have full power and authority to compound and make any arrangement and adjustment for that purpose, or any other arrangement they may deem fit for the interest of the state with the contractor or contractors for the grubbing of that part of said road put under contract in Putnam county.

Repeal.

SEC. 3. All laws or parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

This act to take effect and be in force from and after its passage.

AN ACT to change the character of a part of the Madison and Lafayette road.

[APPROVED FEBRUARY 14, 1838.]

From Ind'polis to Crawfordsville changed to a McAdamized.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the character of so much of the Madison and Lafayette road as lies between Indianapolis and Lafayette be, and the same is hereby changed from that of a rail road to that of a McAdamized road.

Single tract.

SEC. 2. The board of internal improvement shall lay down on so much of said road as lies between Madison and Indiana-

polis a superstructure of a single track rail road only, until further action of the legislature.

SEC. 3. The board of internal improvement in constructing said single tract rail road, shall employ either the T rail or the flat bar rail as in their opinion, taking all the circumstances of the case into consideration, the interests of the state require.

T. rail or flat bar may be used

SEC. 4. That the first lettings hereafter made on the Madison and Lafayette road to the amount of two hundred and fifty thousand dollars, part of the original appropriation of one million three hundred thousand dollars, shall be made on that portion of said road lying between Crawfordsville and Lafayette.

First lettings to be between Crawfordsville and Lafayette.

SEC. 5. Nothing in this act shall be so construed as to make any additional appropriation of money on said Madison and Indianapolis rail road, and the board of internal improvement are hereby instructed to let no contracts on said road which will exceed the amount of the original appropriation on the Madison and Lafayette rail road, deducting from said appropriation the amount by this act ordered to be expended on the road from Crawfordsville to Lafayette.

No additional appropriations allowed.

AN ACT to prescribe the mode of electing members of the Board of Internal Improvement.

[APPROVED JANUARY 25, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter the members of the board of internal improvement shall be elected by joint ballot of the senate and house of representatives.

Mode of electing changed.

SEC. 2. All laws and parts of laws which come within the purview of this act, be, and the same are hereby repealed.

Repeal.

This act to take effect and be in force from and after its passage.

AN ACT giving to the state of Illinois the right of way within this state, to connect the Northern cross rail road in Illinois, with the Wabash and Erie canal.

[APPROVED FEBRUARY 14, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the state of Illinois is hereby granted the right of way to connect the Northern cross rail road, in the said state of Illinois, with the Wabash and Erie canal at Covington, Indiana.

Right of way.

SEC. 2. That the said state of Illinois shall in relation to the right of way granted in the first section of this act, have all the rights, privileges and benefits enjoyed on that portion of the line within Illinois.

Further rights.

SEC. 3. That should the said state of Illinois construct said rail road, as allowed in the first section of this act, the state of

Reserved rights.

Indiana reserves to herself the right of purchasing at any time that portion of said rail road within her limits at whatever it may cost the state of Illinois to construct the said road together with the interest on the money so expended.

SEC. 4. That nothing in this act shall be so construed as to interfere with the provisions of an act entitled "an act to incorporate the Crawfordsville, Covington and Illinois rail road company," approved February 5th, 1836, without the consent of that corporation.

SEC. 5. This act to continue in force no longer than the aforesaid corporation.

This act to take effect and be in force from and after its passage.

AN ACT to authorize the Fund Commissioners to settle with certain debtors of the State.

[APPROVED JANUARY 14, 1838.]

F. Com'rs authorized to settle with the Messrs. Cohens.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the fund commissioners be, and they are hereby authorized to settle and compromise with the Messrs. Cohens of the city of Baltimore and the Messrs. Josephs of the city of New York, for any debts now due from them to the state of Indiana for state bonds heretofore sold them, upon such terms as they may deem advisable and conducive to the interest of the state; and the said fund commissioners are hereby invested with full power and authority to receive from them or either of them, any property either real or personal, stocks or choses in action of any kind whatever, either as collateral security for said debts or in payment of the same, and to execute to them or either of them releases of their liability to the state on account of such debts upon such terms as the said commissioners may think proper.

Authority of comm'rs.

SEC. 2. The said fund commissioners shall have full power and authority to sell, rent, or otherwise dispose of any property which they may receive in payment of said debts, and to pay and satisfy any incumbrances, taxes or other claims upon the same and to pay any instalments or demands of any kind whatever, which may be due upon any stock or choses in action which they may receive in payment of said debts and to sell the same at such times and upon such terms as they may deem most conducive to the interest of the state, and any expenses which may be incurred or payment which may be necessary to be made under the provisions of this act, shall be paid by the fund commissioners out of the internal improvement fund.

This act to be in force from and after its passage.

AN ACT providing for taking depositions in certain cases therein named.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever hereafter, the testimony of any engineer, canal commissioner, member of the board of internal improvements, canal contractor, rail road contractor or laborer employed on any of the canals or rail roads of the state of Indiana shall or may be required by either party to any civil suit, at common law now pending or hereafter to be instituted in any of the courts of the state of Indiana, in any county other than that in which such engineer, canal commissioner, member of the board of internal improvements, canal contractor, rail road contractor or laborer employed on any of the canals or rail roads of the state of Indiana, is employed, it shall be lawful, for the party wishing the testimony of the said engineer, canal commissioner, member of the board of internal improvements, canal contractor, rail road contractor or laborer aforesaid, after giving the opposite party, or his attorney, due notice to take the deposition of such person, before some person legally authorized to take depositions, according to the rules and regulations prescribed by law for taking depositions in other cases, and the said depositions when so taken shall be read as evidence in said cause in the same manner as the depositions of persons living beyond the jurisdiction of the court.

Depositions of engineers, commissioners, &c. may be taken.

SEC. 2. That a statement made under oath as a part of any deposition taken by virtue of the foregoing section, that the witness or witnesses are in the public employment as in said section mentioned, shall be taken as presumptive evidence of that fact.

CHAPTER LVI.

AN ACT concerning Joint Rights and Obligations.

[APPROVED DECEMBER 30, 1817.]

Whereas, much inconvenience and hardship have arisen to numerous citizens of this state, growing out of a principal of the common law of England, and adopted by this state, securing to the survivor or survivors of two or more joint tenants the part or parts of those deceased, to the preference and entire exclusion of the real and personal representatives of the deceased joint tenant, for remedy whereof,

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That all manner of estate or estates, either real or personal, legal or equitable, or thing possessed or holden by

Joint estates, made estate in common.

two or more in joint tenancy, the parts of those who may first die shall not accrue to the survivor or survivors, but shall descend or pass by devise, and shall be subject to debts, charges, courtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose, in the same manner as if such deceased joint tenant had been tenant in common.

Rep. of a joint obligor to perform his joint contracts.

SEC. 2. That the representative or representatives of one jointly bounded with another for the payment of debt or for performance or forbearance of any act, or for any other thing, and dying in the lifetime of the latter, may be charged by virtue of such obligation, in the same manner as such representatives might have been charged, if the obligors had been bound severally as well as jointly.

SEC. 3. This act to take effect from and after the publication of the same.

CHAPTER LVII.

AN ACT to regulate the mode of summoning and empannelling Grand and Petit Jurors

[APPROVED, FEBRUARY 17, 1838.]

C'ty board shall select grand and petit jurors.

When cr't. shall sit 5 weeks.

Cl'k shall draw names.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be the duty of the board doing county business in each county, to cause to be selected from the list of taxable persons in the county, the names of eighteen grand jurors and twenty-four petit jurors, who shall be good reputable freeholders or householders, resident in such county, for each and every term of the circuit court, for one year succeeding such election, which shall be made at the May session of said board in each year, and in those counties where the term of the circuit court extends to two weeks, then twenty-four persons qualified as aforesaid, shall be selected as petit jurors for the first week, and twenty-four for the second week of each term, whose names shall be written on separate pieces of paper, and put into a box to be provided and kept for that purpose; and the clerk of the circuit court shall in the presence of said board, draw from said box eighteen names for grand jurors, and twenty-four names for petit jurors for each and every term of said court, which does not extend by law to a longer time than one week; and where the term of any circuit court extends to two weeks, then twenty-four names shall be drawn and be marked and designated as petit jurors for the first week, and twenty-four names shall be drawn, marked and designated as petit jurors for the second week of each term of the said circuit courts, for the year ensuing such drawing as aforesaid; and the clerk shall also write the names of the said

grand and petit jurors, in separate panels, distinguishing for which term of the circuit court the same have been selected, which panels he shall record in the order book of the circuit court of the county: *Provided however*, that in any case where the time of holding the circuit court in any county in this state shall have been extended beyond the term prescribed by law at the time of selecting the jurors aforesaid, then and in that case the grand and petit jurors aforesaid shall serve during the whole of the term of said court, if the judges of said circuit court shall deem it necessary for the transaction of the business thereof.

Proviso.

SEC. 2. The clerk of the circuit court shall at least thirty days previous to the setting of the same, make out two writs, containing severally the panels of the grand and petit jurors, selected as aforesaid, for said term, and the said writs, under the seal of the said circuit court, directed to the sheriff of said county commanding him to summons said jurors to appear at such term at the court house in said county, to attend to their duties as aforesaid.

Cl'k shall issue venire.

SEC. 3. Each and every person, who shall be summoned as a grand or petit juror, under the provisions of this act, who shall, after having received ten days notice by the sheriff, neglect or refuse to attend as aforesaid, shall be fined in any sum not exceeding three dollars, at the discretion of the circuit court, on the motion of the prosecuting attorney, notice having first been given by *scire facias* or attachment to the offending party, at least ten days previous to the making of such motion.

Penalty on jurors for non-attendance.

SEC. 4. In all cases where the board doing county business as aforesaid, shall omit to make the selection of grand and petit jurors at their May session in any year, as above provided for, it is hereby made their duty to make such selection, at their next or at any succeeding term; and the said board in making such selection, together with all other persons concerned, shall be governed by the same rules, and [be] subject to the like restrictions and penalties, as are herein before provided for.

C'ty board may select jurors at any session.

SEC. 5. Nothing in this act shall be so construed as to prevent persons over the age of sixty years from serving as grand and petit jurors, nor to prevent the board doing county business in any new county, wherein a tax has not been levied, or where there is no tax list, from selecting grand and petit jurors from among the citizens of said county, at their discretion, nor to prevent jurors from being obtained as at common law, to make up any deficiency in the regular panel.

Jurors in new co's, how selected.

AN ACT to regulate the summoning of Juries in the 6th Judicial Circuit.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall hereafter be the duty of the president judge of the sixth judicial circuit or in his absence, the as-

sociate judges, during the sessions of the circuit court in each county in said circuit, to make an order upon the order book, directing the time at which the petit jury shall be summoned to attend the said court during the next succeeding term, and in making said order, the said judges shall have reference to the probable amount of business and shall direct the jury to be summoned at such time during the term as will most facilitate the business, and lessen the expense to the respective counties.

SEC. 2. It shall be the duty of the several clerks of the respective counties in said circuit to make the venire for petit jurors returnable at such time as the said judges shall direct.

CHAPTER LVIII.

AN ACT regulating the Jurisdiction and Duties of Justices of the Peace.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That the jurisdiction of justices of the peace, in criminal cases, shall be co-extensive with the limits of the county in which they shall be respectively chosen. They shall be conservators of the peace throughout the same; and each justice is authorized and required on complaint made on oath, or on view, without complaint, forthwith to issue his warrant, and cause any person charged with any crime, assault and battery, affray or other breach of the peace, to be arrested and brought before him or some other justice in said county, to answer to such charge or complaint, and be further dealt with according to law, and such person to commit, discharge or let to bail, as the case may require, and to recognize such witnesses as the nature of the crime or offence may render expedient, conditioned that such witnesses shall attend on the first day of the next circuit court, to be holden in the county in which the crime or offence shall be tried, to give evidence before such court or the grand jury, and not depart without leave of said court. The condition of a recognizance of any party required to appear and answer before the circuit court, shall be that such party shall appear before such court on the first day of its term, next after the taking of such recognizance, to answer to the particular charge or complaint made against him, abide the judgment of the court therein, and not depart from such court without leave. Justices shall have power on complaint on oath, to issue warrants and take recognizances for keeping the peace and good behaviour, and search warrants for stolen goods.

SEC. 2. All recognizances for the appearance of parties or witnesses in the circuit court, shall be returned by the justice taking the same, to the clerk of such court or to the prosecu-

Jurisdiction of j. p. in criminal cases.

Shall issue warrant on view of complaint.

Party to be committed or let to bail, and witnesses to be recognized, &c.

Condition of recognizance of witnesses.

Recog. to keep the peace.

Recog. how and where returned.

ting attorney of the circuit, at as early a day as practicable, and at farthest by the time conditioned for the appearance of the party or witness named in the recognizance.

SEC. 3. Whenever it shall become necessary to postpone or continue the examination or trial of any person charged with a crime or misdemeanor, before a justice, such justice shall cause such defendant, if the offence be bailable, to enter into a recognizance for his appearance at the time and place of trial or examination, abiding the order of the justice in such case, and not departing without leave; witnesses for the state in such case, may also be recognized, to appear and testify at the proper time and place.

SEC. 4. All recognizances entered into before a justice, shall be in such sum and with such security as the justice in his sound discretion may require, made payable to the state of Indiana, conditioned as the nature of the case may require, signed and sealed by the recognizers, and attested and approved by the justice.

SEC. 5. Justices shall inquire into, in a summary way, and punish by fine not exceeding three dollars, trivial breaches of the peace and other petit misdemeanors, where the penalty affixed by law shall not exceed three dollars; they shall also have jurisdiction in cases of assault and battery, affrays or other breaches of the peace, to the extent of twenty dollars, in the manner and under the restrictions and limitations hereinafter mentioned, and all fines collected or received by any justice under the provisions of this act, shall be paid over by him to the trustee of the county seminary of the proper county, for the use of such seminary.

SEC. 6. In prosecutions before justices, for an assault and battery, affray or other breach of the peace, the defendant shall be tried by the justice alone, demand a jury, or be recognized to the circuit court, at his election; and if the defendant be found guilty before such justice, the fine shall not be less than one dollar nor more than twenty dollars. If on hearing the case submitted to him, the justice shall be of opinion that it is of a nature so aggravated that adequate punishment cannot be inflicted under this act, he shall recognize the defendant to the circuit court in the manner above provided.

SEC. 7. In cases contemplated by the sixth section of this act, to be tried before a justice, he shall, at the request of the defendant, postpone the trial, on cause shewn, for a reasonable period, not less than six days, unless the defendant consent to a shorter time; and shall also, on such affidavit of the defendant as is by this act required for a change of venue in civil cases, direct the case to be tried before, and transfer the papers to some other disinterested justice of the proper county, taking in either case, a recognizance from the defendant or defendants, to appear and answer, and if necessary, a recognizance from the witnesses for the state, to appear and testify at the proper time and place, before the proper justice, and not depart without leave.

SEC. 8. Whenever a justice shall give judgment against a

Examination of criminal may be continued and party recogn'd.

Recog. amount of, and how payable.

Jurisdiction in petit misdemeanors, &c.

Fines to be paid over to seminary trustee.

Defendant may have continuance 6 days.

Change of venue as in civil cases, and in proceedings therein.

Def't shall pay
or replevy fine,
or be committed.

defendant under this act, for a fine and costs, it shall be part of his judgment that the defendant stand committed until the fine and cost be paid or replevied; and the defendant may replevy the same in any case, by entering sufficient bail on the justice's docket, for the amount of the fine and costs, for the term of three months; and on the defendant's refusal to pay said fine and costs, or to replevy the same, such defendant, unless a female, shall be committed to the common jail of the county.

Insolvent def't,
when and how
charged.

Take oath, &c.
as insolvent
debtor.

Costs of keeping
to be paid by ct'y

C'ty, a privileg'd
creditor.

Injured party to
be present at
trial before j. p.

Except in view
of j. p.

Appeal from as-
sessment of fine.

Recog. in appeal

How appeal
shall be sent up
to circuit court.

After appeal the
case to com-
mence de novo,
by indictment.

SEC. 9. If any defendant committed under the provisions of the preceding (eighth) section of this act, shall, after having been imprisoned one day for every fifty cents of the fine imposed upon him, take the oath required of the petitioner in the act concerning insolvent debtors, and in all other respects comply with the requisitions imposed by that act upon such petitioner, such defendant may be discharged from imprisonment, as other insolvent debtors are; and in all cases where such defendant shall be discharged, in manner aforesaid, the costs of keeping such offender in prison, shall be paid by the proper county, as other county expenses are; and said county shall afterwards be considered a creditor of said insolvent defendant, to the amount of said expenses, and to that extent shall be a privileged creditor, having priority of all others, and be first paid; and suit therefor may be brought by and in the corporate name of the board doing county business for such county.

SEC. 10. No trial shall be held before a justice, under this act, for an assault and battery, affray, or other breach of the peace, unless the person on whom the assault and battery is alleged to have been committed, or the witness or witnesses, or some of them who were present at the affray, or other breach of the peace, on trial, shall be present at the trial and examined as witnesses, except in cases where the offence shall have been committed in the presence and view of the justice, or where such injured person, witness or witnesses, shall not at the time reside in the county, or, having been duly subpoenaed shall fail to attend; or shall be legally incapable of giving testimony in such case: *Provided however*, that no justice shall hear and determine any complaint for an assault and battery unless the injured party be present, or subpoenaed to attend said trial and refuses so to do.

SEC. 11. Any defendant who may be convicted under this act, before a justice shall have the privilege of appealing from the judgment of the justice, within thirty days from and after the rendition thereof, to the circuit court of the proper county, by entering into a recognizance, conditioned for the payment of the costs before the justice and in said court, if judgment be therein given against the appellant in such case; and when any appeal is so taken, the justice shall certify his proceeding to the next circuit court, and recognize the witnesses for the state, in the sum of fifty dollars each, and shall file a transcript of his proceedings with the recognizances and other papers, with the clerks of such courts, on or before the first day of the term next after taking the appeal; and such case when so appealed, shall commence *de novo*, by indictment in such court, and no further notice shall be taken of the proceedings before the justice than to tax the costs which may have accrued before the same.

SEC. 12. Nothing herein contained, shall be construed to prevent grand juries from presenting any person guilty of any offence against the public peace, unless such person shall have been punished therefor or acquitted thereof.

SEC. 13. Whenever any defendant, prosecuted under this act, shall fail or refuse to give such bail or surety as may be required of him, such defendant, so failing or refusing, shall be committed to the common jail of the proper county, there to remain until he shall give such bail or surety, or be otherwise legally discharged.

SEC. 14. Each justice shall make out and file in the office of the clerk of the circuit court, on the first day of each term of the circuit court of the county in which such justice resides a list of all fines and penalties assessed by him or collected of any individual whatever, for the preceding six months; and also a succinct statement in writing of every case tried before him for any criminal offence or petit misdemeanor specifying therein the name of such person tried, for what offence, when committed, and whether such trial resulted in an acquittal or conviction; and it shall be the duty of said clerk at each term of the circuit court, to lay before the grand jury the list of fines so returned by the justices.

SEC. 15. The clerk of the circuit court shall record such list of fines so returned at full length in a book to be kept for that purpose, and on the first day of each term of the circuit court of the county, make out and certify two copies of such returned list, and deliver one of said copies to the prosecuting attorney of his county or circuit, and the other, to the trustees of the county seminary.

SEC. 16. Should any justice neglect or refuse to comply with the requisitions of the fifteenth section of this act; such justice or clerk, shall for each such neglect or refusal, be liable to a fine of not less than twenty dollars, for the use of the proper county seminary, to be recovered by indictment, in the circuit court of the proper county.

SEC. 17. Any justice may *ex officio*, bind all those to keep the peace, who in his presence make any affray, or who threaten to kill or beat another, or maliciously or mischievously to destroy or injure the property of another; and such as are brought before him by the constable, for a breach of the peace, in his presence, and all such persons, as having been before bound to the peace, have broken the same and forfeited their recognizances. Also whenever any person, having just cause to fear that another will burn his house, or do him or his family a personal injury, by killing, imprisoning or beating, or maliciously or mischievously injure or destroy his property, or procure others to do so, shall pray surety of the peace, and make oath that he hath just cause, and is actually under fear or apprehension as aforesaid, and establish the truth of his complaint by shewing the menaces, threats, attempts or lying in wait of the defendant, by his own oath or other competent witness or witnesses, and will also further swear, that he does not make such complaint, or pray such surety from any malicious motive, or a disposition to vex or harrass the defendant, the jus-

Examinations
before j. p. no
bar to indict'mt
unless, &c.

Def't failing to
give bail, to be
committed.

Penalty on j. p.
or cl'k for ne-
glect, &c.

J. P. may bind
to bail to keep
the peace, for
threats to injure
property, &c.

Affidavit for
peace warrant.

Summons to be first process ag't a householder

Endorsement

To be served 3 days by reading or copy.

Not to be serv'd copy, if defend't is absent on business, &c.

Capias may issue ag't householder on affid't

Capias to issue where defend't is not a householder and resident

Sum to be endorsed

On ret'n of capias, defend't to give bail or be committed, &c

Plaintiff to be notified

Const's return

SEC. 24. When the defendant is a householder within the county, and resides within the same, a summons shall be the first process to be issued by virtue of this act, on which summons the justice shall endorse the precise sum demanded by the plaintiff, together with the costs that have accrued; and such summons shall specify a certain time, not less than three, nor more than thirty days from the date thereof, and also a certain place, at which the defendant shall appear, and be served at least three days exclusive of the day of service before the time of such appearance, by reading the same to the defendant, or by serving him with a copy if required, or by leaving a copy at the residence of the defendant, in case he be absent; but if such absent defendant shall have left home on business or otherwise, for any time which will render the time of his return uncertain, the constable if apprized thereof, shall not leave a copy, but return the summons, noting the fact in his return; and in such case an *alias* summons may issue, on the return of the said defendant; and the same course may be pursued in cases of *scire facias*. But in all cases where it shall appear, from the oath or affirmation of any person, that the plaintiff will be in danger of losing the benefit of his action, unless the defendant be arrested, the justice shall issue a *capias ad respondendum*, which shall be proceeded on as hereinafter provided. No householder shall be bound to answer to any summons, *capias* or other process issued by a justice under this act in civil cases in any other township than the one in which such defendant may reside or where the debt was contracted, or where the defendant may be found: *Provided however*, that after an appeal to the circuit court, no suit shall be dismissed, because the same was commenced out of the proper township unless the objection shall have been made on the hearing of said cause before the justice trying said cause.

SEC. 25. A *capias ad respondendum* shall be the proper process under this act, in all cases where the defendant shall not be a resident and householder of the county where the process issues; upon which *capias*, the justice shall endorse the precise sum demanded, together with the costs which have accrued; and the said *capias* shall be made returnable forthwith after service thereof; and the constable executing the same, shall, according to the command thereof, forthwith, after taking the defendant, convey him before the justice, who shall thereupon either cause the defendant to give bail for his appearing and abiding the event of the suit, or on neglect or refusal to give such bail, order the constable to convey him to the jail of the county, there to be kept in custody till the time appointed for trial, which shall not exceed three days, unless for good cause shewn, from the day of the return of the *capias*; or the justice may direct the constable to hold the defendant in custody, until the plaintiff shall have notice and time to attend, not exceeding two days, and proceed to trial; and the constable executing such *capias* shall endorse thereon the execution thereof, and sign his name thereto.

SEC. 26 The recognizance of bail to be taken, as is above provided, may be in the following form, to wit: Recognizance of special bail, form of

State of Indiana, county, township, ss.
Whereas, A B has been arrested, and is in custody, at the suit of C D in an action of , for the sum ; now, therefore, I, E F do acknowledge myself special bail for the said A B in said action, in the sum of the condemnation money and costs, to be levied of my goods and chattels, lands and tenements, and for the want thereof, on my body, if default be made in the condition of this my undertaking, which is, that said A B shall be and appear before J H a justice of the township aforesaid, at his office therein, on the day of , at o'clock , to answer to said suit; and if judgment be given against him therein, that he will pay the condemnation money and costs, or render his body in execution therefor; or that, in default thereof, on his part, I, the said E F will do the same for him.

(Signed) E F [SEAL.]
Taken and acknowledged, this day of 18 , before me, J H, J P [SEAL.]

Any bail may surrender his or their principal or principals to the constable before the trial, or to the justice at the time of trial, in discharge of the recognizance; and further proceedings shall be had thereon, as if no such recognizance had been entered into.

SEC. 27. When the parties to any suit appear, at the time and place appointed for trial, the justice shall proceed to hear and determine their allegations and proofs, and shall thereupon give judgment, with costs of suit, according to law and justice; unless he shall on the affidavit of either party, when justice requires it adjourn the trial; which adjournment shall not be for a longer time than thirty days, unless by consent of both parties; or unless he shall grant a continuance of the cause, on account of absent testimony, as hereinafter provided, which continuance shall not be for a longer period than sixty days, at any one time. If, at the time and place appointed for trial, the plaintiff shall not appear personally or by agent or attorney, and it appearing that he was informed of the time and place of trial, if his claim shall not be established by testimony, either oral or written, the justice shall enter judgment against him, as in case of a non-suit: if the defendant, having had lawful notice, shall not appear, at the time and place appointed for trial, personally, or by agent or attorney, and no just cause appearing for such non-appearance, the justice may, at the request of the plaintiff, hear the proofs and allegations of the plaintiff, and determine the cause, and enter up judgment: if both parties fail to attend, the justice may either enter a non-suit against the plaintiff, or continue the cause to some future day, and cause the parties to be notified thereof.

SEC. 28. In all cases instituted or pending before a justice, the plaintiff shall, before the issuing of the process, or at least three days prior to the time set for trial, in cases commenced by summons; and in cases commenced by *capias*, in like man-

ner three days before the time of trial, if the plaintiff shall have been so long notified of such time, otherwise any time before trial, file with the justice, a concise statement in writing, of his cause of action, or of the nature of the wrong or injury of which he complains, if the same be founded in tort; or, in actions of contract, the account, note, bond, bill or other writing, bill of particulars, or other statement in writing of the nature of the demand, on which he intends to rely; and in like manner, the defendant, if he have any special matter of defence, in actions of tort, or any special matter of payment, set off, or other affirmative plea, in actions of contract, shall before trial, file the same, or a succinct statement thereof in writing; and either party may be permitted by the justice, to amend his statement before entering into trial, which shall entitle the adverse party at his election if the amendment is material to a continuance of the cause, at the cost of the party so amending; and on the trial, the plaintiff shall not be permitted to give evidence of any cause of action not contained in his statement, nor the defendant to give evidence of any matter of defence not contained in his statement: and in all cases of appeal from the judgment of any justice or justices, to the circuit court, the justice or justices shall send up to said court, such written statements of the cause of action and defence of the parties, with the transcript and other papers in the cause; which written statements shall not be set aside by the court for the want of form, but shall be acted upon by the court, without any substantial amendment or alteration whatever: *Provided*, the defendant shall always have the benefit of the general issue, should he wish it, without pleading the same, except where the same denies the execution of an instrument which is the foundation of the action or defence, in which case the defendant shall not have the benefit thereof, unless it be verified by oath or affirmation.

Pl't to file statement of defence

Part's may amend before trial.
Part's restricted on trial to their written statements
On app'l no substantial amendment allowed in circuit

Def't to have benefit of the general issue

Pl'tiff shall sue on all his items of account, &c

SEC. 29. In all action of assumpsit hereafter instituted, before any justice of the peace, founded on open and running accounts, between the parties, it shall be the duty of the plaintiff in such case, at the time he shall make application to institute his suit, to file with the justice before whom he shall commence such suit, his bill of particulars, in which shall be included all the open and running accounts in his favor, against the defendant, which shall have accrued up to the time of instituting such suit, and which shall be then due and unpaid, with the items specifically set forth; and if any such plaintiff shall afterwards commence a suit upon any account, which shall have accrued previous to the institution of any such former suit, and the defendant shall plead and show that fact on the trial thereof, the said plaintiff shall pay all the costs that shall accrue thereon.

Deposits when to be taken

SEC. 30. In all cases before a justice, where either party makes affidavit, that he has a material witness, or other material testimony, out of the county, where the suit is pending, shewing where such witness or testimony may be, and the

probability of procuring the same within a reasonable time, and that such affidavit is not made for delay merely, but the furtherance of justice; the justice shall on good cause shewn, by such affidavit continue the cause for any time not exceeding sixty days, and if required, issue a dedimus of any justice of the peace or other competent authority of the proper place, for the taking of depositions in such case, at such time and place as may be mentioned in the notice, allowing each party to ask questions; and the deposition or depositions so taken, subscribed and sworn to by the witness or witnesses, and certified by the justice or other authority taking the same, to seal up and transmit to the justice before whom the suit is pending, taxing on the depositions the legal fees of taking the same; and either party may take the depositions of witnesses living out of the county where the suit is pending, with or without a dedimus, as the case may require; the party taking the same, first giving the adverse party, his agent or attorney, reasonable notice in writing, of the time and place of taking the same; and where the justice or other authority, before whom the same are to be taken, shall be named in the dedimus or notice, the official certificate of such justice or other authority, shall be deemed a sufficient authentication: but no dedimus shall be necessary where the witness resides in this state. All adjournments and continuances granted by a justice, may be with or without costs to the party applying therefor, in the sound discretion of the justice, according to the circumstances of the case, and as nearly as may be, agreeably to the usages and customs of courts of record.

Continuance not longer than 60 days
Dedimus

Depositions how tak'n & certified

Deposits with or without dedimus.

Notice.

Authentication
When dedimus not necessary.
Adj't with or without costs, at discretion of J. P.

SEC. 31. If on the return of the summons, *capias* or other original process, before a justice, either party shall make oath that he verily believes he cannot receive a fair trial, owing to the prejudice of the justice before whom the process is returned, or of the citizens of the township where such justice resides, or that the other party has an undue advantage over him in such township, and file a certified copy of such oath before such justice, before the commencement of the trial, such justice shall grant a change of venue, to and before some other justice of the same township or county who may be disinterested, as the case may require, on the party applying for such change, if defendant, paying the costs occasioned thereby, and if plaintiff, paying all costs which have accrued previous to the change, as well as those occasioned thereby: and the justice granting such change, shall thereupon deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to and before whom the change may be granted, who shall proceed therein, in the same manner, and have the same jurisdiction, powers and duties in all respects whatever, as if such suit had been originally instituted before him.

Change of venue when granted in civil cases.

Party obtaining change, to pay costs.

J. P. to transmit papers.
Jurisdiction of J. P. to whom cause is sent.

SEC. 32. When parties agree to enter without process, before a justice, any action or suit in this act made recognizable before him, such justice shall enter the same on his docket and proceed to trial, judgment and execution, in all respects, in

Trial by consent without process.

the same manner as if original process had been issued, served and returned.

Judg't to be entered in 4 days from trial.

SEC. 33. Every judgment of any justice, shall be entered on the day of trial, or within four days thereafter, and the justice may, on motion and for cause shewn, grant to either party a new trial in any cause, according to the usage and custom of courts, at any time within four days after entering judgment, and set a time for the new trial, of which time the adverse party shall have at least three days previous notice. Such adverse party shall also have reasonable notice of the motion for a new trial, if the same be not made on the day of the former trial, or in the presence of such party.

New trial.

Notice.

Judg't for def'tnt for balances due

SEC. 34. If in any cause, it shall appear at the trial, that there is a balance due from the plaintiff to the defendant, the justice shall enter judgment against the plaintiff in favor of the defendant, for the sum so appearing to be due, with costs; and such defendant shall be entitled to execution therefor, in the same manner as if he had been plaintiff in the cause.

Execution in favor of defend't.

Judg't rendered in absence of party how opened, &c.

SEC. 35. When any judgment may be entered against any party not present at the trial, if such party appear within ten days, and pay or give security for the costs, and also enter into bond with sufficient security to pay or satisfy the judgment that may be rendered in the case, and request the judgment to be opened, the justice may open the judgment and grant a new trial, and appoint a time therefor, of which the party obtaining the new trial shall notify in writing, the adverse party, his agent or attorney, if resident in the county, at least six days prior to the time so appointed; and if such adverse party, his agent or attorney, do not reside in the county, the party obtaining the new trial shall leave a written notice thereof, in the office of the justice granting the same, at least ten days prior to the time set for such new trial.

Costs to be paid or secured. Bond. New trial.

Notice.

When J. P. of adjoining township shall have jurisdiction

SEC. 36. Where there is no justice resident in the proper township, or none who is not father, brother or son of the parties in any cause, or legally interested in the event of the suit, then the nearest and most convenient justice in some adjoining township, who is not of kin to either of the parties, in either of the degrees aforesaid, or interested as aforesaid, shall have full and complete jurisdiction of such cause, in the same manner as if he had been resident in the proper township.

Arbitrat's when and how chosen

SEC. 37. At any time before trial, the parties agreeing thereto, may have the cause submitted for decision to three disinterested men, to be chosen by the parties, as arbitrators, who, if present, shall hear and determine the cause, on oath or affirmation to be administered by the justice, to decide impartially; but if not present, the justice shall issue a summons for them to attend at a certain time and place agreed on by the parties, or fixed by the justice, if they do not agree thereon, and noted on his docket, which summons may be served by the constable, or one of the parties or some other person, as they may agree; and the arbitrators, when met and sworn, at the time and place appointed, shall if the parties or either of

Arbitrators to be sworn. If not present to be summoned

Award

them attend, proceed to hear and determine the cause, according to the allegations and proofs; and they or a majority of them shall make out and sign an award, and return the same to the justice, by a certain day, to be fixed and noted on the docket at the time of choosing the arbitrators; and on such award being so returned to the justice, he shall on the day so fixed for the return thereof, enter the same on his docket and render judgment thereon; which judgment shall be conclusive to both parties, unless it shall appear to the circuit court on an appeal, or to the justice rendering such judgment, within ten days thereafter, that such award was obtained by fraud, corruption or other undue means; and whenever satisfactory proof thereof shall be adduced before such justice, within the period aforesaid, it shall be lawful for him to open his judgment and set aside such award, at the costs of the party so obtaining the same, and proceed to final trial and judgment in such case, as if such award had never been made, or no arbitrators chosen: and the circuit court, when an appeal is taken, shall render judgment on such award, in the same manner the justice should have done, which shall in like manner be conclusive on the parties, unless it shall appear to the court, that the arbitrators have made a plain and palpable mistake of law, to the injury of one of the parties, or by satisfactory proof that the award was obtained by fraud, corruption or other undue means; in either of which cases, the court shall set aside such award, and proceed to final trial and judgment as in other like cases of appeal. Arbitrators chosen and acting under this section, shall each be entitled to fifty cents per day for their services, to be taxed and collected as other costs are. Witnesses may also be subpoenaed and compelled to attend and testify before the arbitrators, and the costs thereof taxed with the costs of the suit; and the arbitrators and witnesses may be sworn by any justice of the proper county.

Ret'd to J. P.

Judg't thereon. Award conclusive

May be set aside for fraud within ten days

Cause to proceed

Proceed'gs on award in circuit court on appeal

Pay of arbit'ors.

SEC. 38. In all trials in actions of debt or assumpsit, before any justice, it shall be lawful for the plaintiff, if the defendant deny the debt, demand or account, to require such defendant to answer, on oath or affirmation, to such charge and if thereupon the defendant deny the same, the plaintiff shall not have judgment, unless he establish his claim by legal evidence; and whenever the defendant in any such action shall allege matter of payment or set-off to the plaintiff's demand, or plead or set up any other plea or defence in bar of the same, he may in like manner, require the plaintiff to answer such allegation or plea, on oath or affirmation: and upon the refusal of either party to answer as aforesaid, the justice shall enter up judgment as if the matter so charged or pleaded were confessed; and the plaintiff or defendant, when so required to be sworn, at the request of his adversary, shall be at liberty to testify to the whole matter of controversy, as a disinterested witness might do, the justice or jury in all cases judging of his credibility as in other cases; and in all such actions, any party residing in the county where suit is pending may, at the request of his adver-

Parties when & how made witnesses

Def't, when to be sworn

Plaintiff, when to be sworn

Party to be subpoenaed to testify

If party is out of co. deposition taken

sary, be subpoenaed and compelled to attend and testify as aforesaid, in the same manner and under the same penalties, as other witnesses; and the deposition of any party residing out of the county where the suit is pending, may in such cases be taken by his adversary, and read in evidence in the same manner as the deposition of any other witness. And in the trial of all appeals in such cases, in the circuit court, the provisions of this section shall be adopted and pursued.

C. court shall
try appeals in
like manner

Jurisdiction of J
P in replevin

In what cases
replevin will lie
before J. P.

Affidavit in re-
plevin

Writ of replevin
how issued

Com'nd of writ

Bond to prose-
cute replevin

SEC. 39. Justices are hereby invested with jurisdiction to issue writs, and try actions of replevin, where the value of the property claimed by the plaintiff shall not exceed fifty dollars, and proceed to final judgment and execution therein, in the manner and cases hereinafter prescribed, as fully and completely as the circuit courts may or can do, in actions of replevin made cognizable before them; and to issue all the legal and necessary writs and process in an action of replevin.

SEC. 40. Whenever any person shall tortiously take and unlawfully detain, or lawfully acquire and unlawfully detain any personal goods and chattels of another, of the value of not more than fifty dollars, the party aggrieved may replevy the same; by writ to be issued by a justice, in the manner herein-after prescribed. But nothing herein contained shall be so construed as to extend the privilege of said writ, to any execution defendant, to replevy property taken by virtue of an execution, by any officer of this state.

SEC. 41. Before such writ of replevin shall be issued, the plaintiff therein, his agent or attorney, shall make an affidavit before some justice or judge of this state, that the defendant in such case, (naming him) doth unlawfully detain from the plaintiff, the personal goods and chattels which such plaintiff seeks to replevy, setting forth the article or articles.

SEC. 42. That when such affidavit is made and filed with the justice, he shall at the request of the plaintiff, his agent or attorney, forthwith issue a writ of replevin, to any constable of his township, commanding him to take into his custody, the goods and chattels mentioned and described in such affidavit, and them safely keep, until such plaintiff shall satisfy and make him safe, by good and sufficient pledges, that he will well and truly prosecute such writ to effect, and return such goods and chattels to the defendant, if he succeed in his defence, and pay to said defendant such damages as may be awarded him, in case of his so succeeding in his defence; and on his so succeeding, such return shall on the final hearing of the cause be awarded by the justice, or in case of appeal by the circuit court, and on being so satisfied and made safe, to deliver such goods and chattels to the plaintiff in the writ, and summon the defendant to appear at a time and place to be named in the writ to answer the plaintiff of and concerning the tortious taking and detention, or unlawful detention, as the case may be.

SEC. 43. The constable to whom such writ may be directed, before he delivers the goods and chattels taken by virtue thereof, to the plaintiff therein, shall take from such plaintiff a

penal bond in double the value of the property replevied, with sufficient security, to the acceptance of such constable, conditioned that such plaintiff shall well and truly prosecute said writ to effect, and return such property to the defendant, if on the final hearing of the cause, such return be awarded by the justice or court trying the same; and also pay such damages as may be awarded to the defendant, if he succeed in his defence in such cause. And if the plaintiff do not prosecute his said writ to effect, or if the defendant succeed in his defence to such action, the constable shall, on request, assign such bond to the defendant, who may thereupon commence suit thereon in his own name, after the same becomes forfeited, and recover the value of the property replevied, together with costs, and such damages as may be deemed just and reasonable. If the plaintiff succeed in the action, the justice, court or jury trying the same, shall give the plaintiff such damages as may be deemed just and reasonable, for the tortious taking and detention, or the unlawful detention only, as the case may be, of the property replevied.

Constable to as-
sign forfeited b'd
to def't & suit
may be brought
Damages

SEC. 44. If the plaintiff in replevin shall not, within twenty-four hours after goods and chattels shall have been taken into possession by the constable, by virtue of said writ of replevin, execute and deliver to such constable, a bond as before directed, such constable shall forthwith, after the expiration of that time, restore such goods and chattels to the person from whom the same shall have been taken, taking his receipt therefor.

If bond not given, in 24 hours
goods to be re-
turned to def't.

SEC. 45. On such bond being duly executed, the constable shall deliver the goods and chattels replevied to the plaintiff, and summon the defendant to appear and answer, according to the command of the writ of replevin, and make return of such writ, with the time and manner of service; and the suit shall then proceed to final hearing and judgment, as in other cases; and the justice shall have power to issue all necessary writs and process, for carrying his judgment and powers into full and complete effect; but double costs shall not be recovered or taxed in any action of replevin, under this act.

On bond being
given, goods to
be deliver'd to
pl'tiff.

Further pro-
ceedings.

Double costs not
taxable.

SEC. 46. Executions issued by a justice, shall operate as a lien on the personal property of the judgment debtor named in the execution, in the county where the same shall be issued from the time when the same shall be delivered to a constable for service; which time such constable is hereby required to endorse thereon.

Execut'ns when
a lien on pers'nal
property.
Constable to en-
dorse time of
receiving.

SEC. 47. In all cases hereafter, when any judgment debtor shall deliver to any constable, on execution against such debtor, any property not belonging to such debtor, whereby a delay in the collection of the demand named in such execution shall be produced, such debtor shall be liable to pay the amount of such demand, by an alias *feri facias*, or writ of *capias ad satisfaciendum*, as the judgment creditor in such case may choose, together with twenty per centum in damages thereon, to the use of such creditor.

Penalty on de'tr
giving up, on ex-
ecut'n, prop. not
his own.
Alias fi. fa. or
ca. sa., with 20
per ct. thereon.

SEC. 48. On all judgments rendered by justices, on any

Stay of execut'n

and all causes of action, except where otherwise specially provided for by statute, on the judgment debtor's entering good and sufficient security, on the proper justice's docket, where the judgment is entered, for the amount of such judgment, interest and costs, there shall be a stay of execution, if the sum shall not exceed six dollars, thirty days; if over six, and not exceeding twelve dollars, sixty days; if over twelve, and not exceeding twenty dollars, ninety days; if over twenty and not exceeding forty dollars, one hundred and twenty days; and if over forty dollars, one hundred and fifty days; and if such bail be not entered, or the judgment fully paid and satisfied, the justice, unless otherwise directed by the judgment creditor, shall issue one execution, and in all cases where there shall be a return that property taken is not sold for want of time or bidders, an alias or venditioni exponas on such judgment, returnable to such justice within thirty days from the date thereof, directed to some constable of the proper township, reciting the rendition of the judgment, with the date and amount thereof, and commanding such constable to levy and make the debt, or damages and costs, embraced in and by such judgment, with interest and accruing costs, of the goods and chattels of such judgment debtor, to be found in his county; but if such debtor shall enter sufficient bail as above provided for the stay of execution, within ten days, or before sale of property on such execution, the justice shall recall the same. All property to be sold on execution by a constable, shall be by the constable advertised at three of the most public places in the township where the same may be found and seized, at least ten days prior to the day of sale, and the sale shall be held between the hours of ten o'clock, A. M. and five o'clock P. M. of such day, at the dwelling-house of such debtor, or on the premises where found and seized, or at one of the most public places in the township where found and seized, and shall be as publicly made as the case will permit. And where bail is entered for the stay of executions above provided, the first process shall be an execution against the goods and chattels, of the judgment debtor, and if such goods and chattels, sufficient to satisfy such execution be not found, and a return be made thereon by the constable to that effect, the justice, unless otherwise directed by the judgment creditor, shall issue a *scire facias* against the bail for the stay of execution, which shall be served and returned by the constable in the same manner as a summons; and upon the return thereof, served, the justice shall, unless good cause to the contrary be shewn, enter judgment; and unless otherwise directed, issue execution against the bail for the amount of such judgment and the costs, or such part thereof as shall remain unsatisfied, to be in substance of the same form, and executed and returned in the same manner as other executions; and on the judgment against the bail, there shall be no stay of execution: *Provided*, that if the constable shall levy on the goods and chattels of the defendant within the thirty days, but not in time to sell the same before the thirty days expire, the return day shall be extended ten days thereafter.

SEC. 49. Where any bail for the stay of execution, under

For want of bail or pay'm't execution to issue.

Recital & command of execution.

When bail may be enter'd & execution recalled.

Property, how and when advertised & sold.

After stay expired, a fi. fa. shall issue vs. judg'm't debtor.

On fi. fa. returned unsatisfied scire facias vs. bail.

Scire facias served and return'd like a summons.

Judg'm't & execution vs. bail. No stay thereon

Proviso.

this act, shall become apprehensive that by execution being delayed until the full term of the stay shall have expired, such bail may be compelled to pay the judgment, such bail may go before the justice on whose docket he stands as bail, or the justice having such docket in his possession and the right to issue execution on such judgment, and make and file an affidavit, that he is apprehensive of being compelled to pay such judgment, if execution be further delayed; and thereupon at the request of such bail, such justice shall issue execution against the original judgment debtor, which shall be proceeded with as in other cases: but if within ten days after levying such execution, and the term of stay shall not have expired, such principal debtor shall give other and additional security, to the acceptance of the justice, for the stay of execution for the time not expired, and pay or secure the costs of such execution, the same shall be recalled and stayed, and the subsequent proceedings shall be the same as if no execution had issued, except that in proceeding against the bail, a *scire facias* shall be issued against the person last entering as security, in the first place, and no *scire facias* shall be had against the first security.

SEC. 50. After judgment against the bail for stay of execution, the original judgment against the principal shall remain valid and in force, for the use of such bail, who may at any time sue out execution thereon, for his own use, which shall be so endorsed by the justice; such bail shall also be entitled to a transcript of such original judgment, for his own use, which shall have the same force and effect as transcripts in other cases.

SEC. 51. In all cases where execution shall issue, on any judgment, against any judgment debtor, and goods and chattels cannot be found to discharge the same, in case it shall be made known to the justice who issued such execution, that such debtor has lands or tenements, the justice shall, on application of the judgment creditor, forward a certified transcript of the judgment and proceedings to the clerk of the circuit court, who shall file said transcript, and issue a *scire facias* against such debtor, to appear at the next term of such court, and shew cause why execution should not issue; and if such defendant neglect to attend, or do not shew cause to the satisfaction of the court why execution should not issue, the court shall direct execution against the goods and chattels, lands and tenements of such debtor, in the same manner as though judgment was obtained in said court. The provisions of this section shall extend to the lands and tenements of decedents' estates, on judgments rendered against them in their lifetime, and the *scire facias* shall be served on their executors, administrators or heirs, and also on the terre tenants, if any. Two returns of nihil, or not found, on a *scire facias*, shall be deemed equivalent to a service thereof. Writs of *scire facias* may be served and returned as summonses.

SEC. 52. Justices of the peace are hereby authorized to issue writs of execution, upon judgments on their dockets, in day.

Remedy for bail, fearing principal's insolvency

Affidavit.

Execution vs. principal.

Execution to be recalled on new bail given.

Costs of execution to be p'd or secured.

Scire fa. vs. last bail.

Bail entitled to execution and transcript vs. principal.

When & how for want of personal property, execut'n may go vs. real estate.

J. P. to forward trans. to cl'k of c. c. who shall file it, and issue scire facias, &c. C. c. shall direct execution vs. goods, chattels, lands & tenements.

Remedy vs. real est. of decedents. Sci. fa. vs. executors, administrators, heirs, or terre tenants.

Execut'n when to issue on Sunday.

all cases when the judgment debtor is about to abscond on Sunday, upon the judgment creditor's making and filing with such justice, an affidavit that such judgment is unsatisfied, either in whole or in part, and that such judgment debtor is about to abscond from the county, and that he verily believes the said judgment debtor will be out of the reach of process, if the issuing thereof should be deferred until another day.

Service of writs
on Sunday:

SEC. 53. In all cases where any writ is authorized to be issued on Sunday, it shall be lawful for constables or other officers to whom the same may be directed, to serve the same on Sundays.

Pl'tf not resid'g
in co. may be ru-
led to surety for
costs.

SEC. 54. In all cases where the plaintiff shall not reside in the county where suit is brought, or to be brought, the justice may, before issuing process or entering the case, or at any time before trial, with or without motion, require and cause such plaintiff to give sufficient security, resident in the proper county, for the payment of all costs caused or to be caused by such plaintiff, in such case before the justice, which security may be by bond, or by entry on the justice's docket signed by the surety, who shall thereafter be liable for all costs caused or to be caused by such plaintiff in such case, before the justice.

Surety may be
by bond, or en-
try on docket.

When j. p. may
appoint const'bl.

SEC. 55. In all cases where it shall be necessary to have process served, in either civil or criminal cases, and the constable or constables of the proper township shall be absent, or unable from sickness to attend to their official duties, or there be no constable in such township, legally authorized to act in such case or cases, it shall be lawful for any justice of such township, to appoint a person willing to serve as constable, until the return or removal of the disability of such absent or other constable or constables, or until one shall be legally appointed; and the person so appointed by the justice, after taking the oath required of other constables, shall have the same authority and duties, and be subject to the same penalties, and liabilities, and entitled to the same fees and pay as other constables; and such justice shall stand as security, and be also in that character, civilly liable for any neglect of duty or any illegal proceedings, on the part of such constable so by him appointed.

Oath, authority,
and duty.

J. p. appointing
constable to
stand as surety.

SEC. 56. It is hereby made the duty of justices to receive from constables all moneys by them collected, on process issued by the justices respectively; also all moneys the collection of which may have been entrusted to them or which may be offered them on any judgment, account or demand on their dockets or in their possession; and to pay over all moneys so collected or received by them, in their official capacity, to the person or persons entitled thereto or duly authorized to receive the same. And if any justice shall neglect or refuse to pay over any money, by him collected or received in his official capacity aforesaid, when thereto requested or demanded by the person or persons entitled thereto, or duly authorized to receive the same, at the office or residence of such justice, he being present, it shall be lawful for such person to complain to some other justice of the township in which the delinquent

J. p. to receive
and pay over
money.

Remedy vs. j. p.
for neglect or re-
fusal to pay
over.

justice resides, if any there be capable of acting in such case, and if no justice resides in such township capable of acting in such case, then to some justice of an adjoining township in the same county, whose duty it shall be forthwith to issue a summons to some constable of his township, commanding him to summon such delinquent justice forthwith to appear before him, and shew cause, if any there be, why judgment should not be entered against him, for the amount of money so by him collected and not paid over; and if such delinquent justice shall not shew good cause the other justice shall render judgment against him, for the amount of money so by him collected and not paid over, together with ten per centum thereon in damages; and in such case there shall be no stay of execution. Judgment vs. j.

SEC. 57. No stay of execution shall be allowed on judgments against any justice, for any money collected or received by him, by virtue of his office or trust, or on bonds for the delivery of property under execution; or against bail for stay of execution, on his undertaking as such bail. No stay on cer-
tain judgments.

SEC. 58. In all cases where the constable shall make it appear to the satisfaction of the justice, that he has been deprived of an opportunity of levying any execution directed to him, within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and make a return to that effect, to the justice who issued the same, such justice is hereby authorized and required, if requested, to issue another execution, for the balance or the whole of the execution remaining unsatisfied, which shall be served and returned in all respects as other executions: and justices may issue writs of *venditioni exponas* to sell property seized on a *fieri facias*, and remaining unsold for want of bidders; also, *alias* executions whenever the nature and justice of the case may require. Alias executions
may issue in cer-
tain cases.
Constable to
make certain re-
turn cases, &c.

SEC. 59. When any person shall be duly subpoenaed to attend and give testimony in any suit, civil or criminal, before a justice, and shall fail to attend at the time and place specified in the subpoena, and when no reasonable excuse is given for his or her non-attendance, every such person shall forfeit and pay a fine not exceeding three dollars, at the discretion of the justice, and moreover be liable to the party injured for such damages as such party shall sustain for the want of such witness, to be recovered before any justice or court having cognizance thereof; and every justice before whom any cause is pending or may be decided, shall issue an attachment for every person or witness so failing to attend, on application of the party who may be injured thereby. Penalty on wit-
nesses disobey-
ing subp.
Fine not exceed-
ing \$3.
Damages, to
party injured.

SEC. 60. If any party shall order a subpoena for more than two witnesses to prove any one fact, the party so ordering such subpoena shall pay the expense or cost of such supernumerary witness or witnesses; and if any witness shall be subpoenaed and not examined by either party, the expense and cost of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter, or otherwise J. p. may issue
attachment, vs.
witness.
Party subp'a
more than two
witnesses to
pay expenses
thereof.

prevent or render unnecessary the examination of such witness.

Sec. 61. When any live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, to make such allowance to the constable for keeping the same as he may think reasonable, not exceeding twenty-five cents per day for a horse, and in the like proportion for other animals.

Sec. 62. In all civil cases to be tried before a justice, at the request of either party, the justice shall direct the constable to summon and cause to appear before him, twelve lawful citizens of his county, neither of whom shall be related to either party, or interested in the suit, who shall be empanelled as a jury to try such cause; but before they proceed therein, such justice shall administer to them the following oath or affirmation: "You and each of you do solemnly swear (or affirm as the case may be,) that you will well and truly try the cause submitted to you by A. B. plaintiff, and C. D. defendant, and a true verdict give, according to law and evidence to the best of your judgment and ability: So help you God." Omitting, in case of affirmation, the words "So help you God," and substituting therefor the words "under the pains and penalties of perjury." And it shall be the duty of the justice (unless a new trial be granted, as in this act provided) to enter judgment on the verdict of such jury, for the party in whose favor it may be given, and proceed by execution or otherwise, as in other cases. And whenever in any case such jury shall be demanded by the plaintiff, and shall render a verdict, and not find at least twenty dollars for such plaintiff, such plaintiff shall pay the fees of such jury and all additional costs occasioned by such jury trial. In all other cases, the costs of the jury shall abide the event of the suit.

Sec. 63. That in any civil cause to be tried before a justice of the peace, where the sum does not exceed twenty dollars, at the request of either party, the justice shall direct the constable to summon and cause to come before him six citizens of the proper county, having the qualifications of jurors, who shall be empanelled to try such cause, and shall have the same oath or affirmation administered to them as to other jurors; and the justice shall enter a judgment upon their verdict as in other cases.

Sec. 64. Where jurors are empanelled to try cases before justices of the peace, the parties shall have the same rights of challenge, peremptory or for cause, as is provided in civil cases tried before the circuit court.

Sec. 65. If any juror or arbitrator, when duly summoned, shall neglect or refuse to appear before any justice, at the proper time and place, such juror or arbitrator shall be fined by the justice, one dollar for every such offence, unless such juror or arbitrator shall have a reasonable excuse for such neglect or refusal.

Sec. 66. In all cases where any witness or other person shall be guilty of a contempt before any justice, whilst sitting

Allowance for keeping live stock taken in execution.

Trial by jury.

V enire.

Oath of jury.

Judgment on verdict.

When plaintiff shall pay jury fees.

Civil causes under \$20 may be tried by a jury of 6 men.

Right of challenge

Fine on juror or arbitrator for non-attendance.

or acting in his official capacity as such, in the trial or hearing of any cause, such justice shall have the power to inflict a fine therefor upon such witness or other person, not exceeding three dollars for each contempt, to which may be added in each case imprisonment not exceeding three hours.

Sec. 67. When any action upon any contract, express or implied, is pending before a justice, it shall be lawful for the defendant to plead, as set-off, any judgment rendered in his favor, by any justice in this state against the plaintiff, then due and unsatisfied; and upon the trial, such judgment may be proved by a transcript thereof, duly certified under hand and seal, by the proper justice; and if the amount of the judgment so pleaded in set-off, shall exceed the amount of the debt or demand claimed by the plaintiff, the justice shall give judgment for the defendant for the balance due him; and whenever any judgment shall be in set-off as above, it shall be the duty of the justice before whom such set-off is pleaded, to give the plaintiff a certificate thereof, under hand and seal, which when filed with the proper justice, shall stay all further proceedings on the judgment so pleaded in set-off. And should any justice give a false, partial or imperfect transcript, the same purporting to be true and perfect, whereby imposition or fraud is practiced or attempted, such justice and the person using such partial, false, or imperfect transcript, knowing it to be such, shall be severally fined, upon presentment or indictment, in the proper circuit, in any sum not exceeding double the amount of the sum so set off, or attempted to be set off.

Sec. 68. Justices shall have power to hear and determine any application to enter satisfaction of judgments on their dockets, whenever the debtor alleges payment or satisfaction, the creditor, his agent or attorney first having due notice thereof; and if in any case, on such motion being made, it be necessary to suspend or recall any execution before the final hearing of such application, the justice shall have power to do so, on the creditor being made safe in his demand, by bond and security, to pay the amount due, in the event of such motion failing.

Sec. 69. Whenever any justice shall remove out of the township, county seat, or incorporated town wherein he was elected, his office shall by such removal be vacated, and his authority by virtue thereof shall cease.

Sec. 70. Whenever the office of any justice shall become vacant, all the dockets, papers and public laws or statutes, pertaining to his office, shall, if a successor be chosen and qualified at the time, be delivered over to him, but if no successor be so chosen and qualified, then to the nearest justice in the township, if any there be, but if there be none, then to the nearest in the county, to be kept by him until a successor shall be chosen and qualified, and then delivered over to him, on request; and if any justice shall absent himself from his township, county seat or incorporated town, for thirty days together, he shall deposit the dockets, papers, and public laws or statutes of his office, with the nearest justices as aforesaid, to

Contempts, fine for, and imprisonment.

Judgment by j. p. may set off.

Judgment may be proved by transcript.

Judgment for debt for balance.

Proceedings when judgment of j. p. is pleaded as set-off.

Penalty for giving or using false or partial transcript.

Satisfaction of judgment how obtained.

Removal of j. p. shall vacate his office.

Office becoming vacant, docket, &c. to be delivered to successor.

J. p. absenting himself 30 days, shall deposit docket, &c.

Any person holding docket, &c. to deliver over, &c.

Penalty for neglect to deposit docket, &c.

Proviso.

J. p. with whom docket is deposited, shall transfer judgments, issue executions, &c.

Note transfer.

Successor of j. p. may issue executions, give transcripts, &c.

Proceedings on transcripts of judgments, &c.

Scire facias.

Or capias.

Execut'n awarded, unless cause shewn.

Stay, from date of first judgment.

be kept and acted on by him, in the cases and manner herein-after provided, until such absent justice shall return, or a successor be chosen and qualified, and then delivered to such justice or successor; and in case of a vacancy or absence, it shall be the duty of any person into whose possession any such laws, statutes, dockets or papers may come, to deliver them on demand, to the proper justice; and each justice so receiving, by succession or on deposit, any such laws, statutes, dockets or papers, shall, if requested, give a receipt therefor, to the person from whom he receives the same: and if any person shall neglect or refuse to comply with either of the above provisions of this section, he shall, on conviction thereof, by presentment or indictment in the proper circuit court, be fined in any sum not exceeding five hundred dollars, exclusive of the costs of prosecution; and shall moreover be civilly responsible for damages, to any person injured by any such neglect or refusal: *Provided*, that nothing in this section shall be so construed, as to require a justice of the peace, who makes a temporary deposit of his docket, to accompany the same with any other papers than those which relate to unsettled business thereon.

SEC. 71. The justice with whom the docket of another may be deposited, during a vacancy or absence as aforesaid, is hereby authorized, whilst having such docket legally in possession as aforesaid, to transfer to his own docket, any judgment on the docket left with him, that may be due before it shall be delivered up, at the request of the judgment creditor, or any other party interested, and thereupon to issue execution thereon, or to give a transcript thereof, in the same manner as if the judgment and proceedings had been originally had before him, and shall note, "Transferred to the docket of A. B., the—day of—," on the docket deposited, whence the transfer is taken. And the successor of any other justice, on obtaining his dockets and papers, shall be authorized to issue executions on his judgments, and give and certify transcripts of his proceedings, in the same manner as if the same had been originally had before him.

SEC. 72. In all cases where a transcript of a judgment of a justice in this state, shall be made out and certified by the justice authorized to certify the same, and delivered to another justice, for the purpose of enforcing execution of such judgment, the justice to whom the transcript is delivered, shall make an entry thereof on his docket, and issue a scire facias against the judgment debtor therein, to appear and shew cause, if any exist, why execution should not issue against him for the amount of the judgment and costs, as stated in the transcript; or the justice may issue a capias against such debtor, on which the debtor may be held to bail, as in other cases; and if the defendant cannot prove that he has fully paid and satisfied such judgment, or shew other good cause, execution shall be awarded and issued for the whole amount thereof, or such part as shall appear to remain unsatisfied, with interest and costs, as in other cases; but stay of execution, if allowable, shall only

be had from the date of the original judgment. And if any bail for stay of execution on any judgment, shall remove from the county where he shall have entered as such bail, to any other county in this state, and a return of a constable be had, on an execution against the principal, of no goods and chattels, or of not goods and chattels sufficient, as hereinbefore provided, the judgment creditor may obtain from the proper justice, a certified transcript of the judgment, recognizance or entry of bail for the stay, and other proceedings in the case; upon which transcript such creditor may proceed, before a justice of the county where the bail may reside, against such bail, by scire facias or capias, as in the case of other transcripts.

SEC. 73. If any justice shall refuse or neglect to give to any person entitled thereto, and paying or tendering his fee therefor, a certified transcript of any judgment or other proceedings, rendered or had by or before him, or in his possession for the purpose of being acted on by him; or to perform any other act or duty required of him by this act, and shall not render a reasonable and sufficient excuse for such neglect or refusal; every justice so offending, without such excuse, shall on conviction thereof, on presentment or indictment in the proper circuit court, be fined in any sum not exceeding one hundred dollars, and shall moreover be liable to the suit of the party injured.

SEC. 74. In serving executions, subpoenas, writs of attachment, and process in criminal cases, issued by justices, the power and authority of constables shall be co-extensive with the limits of their respective counties; and such executions, subpoenas, writs of attachment, and criminal process, shall extend and be operative throughout the proper county where issued.

SEC. 75. It shall not be lawful for any justice to purchase, directly or indirectly, any judgment, or part thereof, on his docket, or any docket in his possession for the purpose of being acted on by him; nor for any constable, either directly or indirectly, to purchase any judgment or part thereof, on any docket of any justice in his county; and if any justice or constable shall offend against the above provisions of this section, he shall be fined for each offence, upon conviction thereof, by presentment or indictment in the circuit court, in any sum not exceeding one hundred dollars, nor less than five dollars, with costs.

SEC. 76. No writ of *capias ad satisfaciendum* shall issue, on the judgment of a justice, in civil cases, until after a return by the constable, on execution, of no goods and chattels, or not goods and chattels sufficient to satisfy the execution, unless the judgment creditor, his agent or attorney shall make and file with the justice in whose office the judgment may be, an affidavit, stating that he has reason to believe and does verily believe, that the judgment debtor is about to leave the county without leaving behind him a sufficiency of property subject to execution, to satisfy such judgment, or that he has reason to

Proceedings vs. bail for stay, removing to another county

Penalty on J. P. for refusing transcript, or other neglect of duty

Executions may be served throughout the county

J. P. and constable prohibited from having judgments

Penalty

Ca. sa. not to issue, until return of no goods, &c. unless, &c.

Def't on capias,
to be detained
not more than
24 hours

Ret'n not found
before proc'ings
vs. special bail

Remedy vs. spe-
cial bail

Spec'l bail may
surrender prin-
cipal, and how

Notice to pl'n'tiff

Judg't for costs
vs. principal

Comm't to jail,
by constable
under ca. sa.

Certain pleas or
statements to be
sworn to

believe and does verily believe, that such judgment debtor will or does conceal his property with intent to defraud his creditor or creditors; in which case it shall be lawful for the justice to issue a *capias ad satisfaciendum*, in the first instance, without first issuing a *feri facias*, or having such return by the constable as aforesaid. And whenever a defendant in a civil case, shall be brought before a justice, and judgment be rendered against him, it shall be the duty of the justice to order such defendant into the custody of the constable, for any time not exceeding twenty four hours, until the judgment creditor, his agent or attorney, shall have an opportunity of making and filing such affidavit, unless such debtor shall give special bail, for the stay of execution, as hereinbefore provided. And before proceeding against any special bail, there shall be a return of not found, by a constable, on a *capias ad satisfaciendum*, against the principal.

SEC. 77. The remedy against any special bail, taken under authority of this act, may be by *scire facias*, or action of debt on the recognizance of bail, in any court of competent jurisdiction; and such special bail may, on obtaining a bail-piece from the justice, seize and surrender his principal, at any time before suit brought or judgment rendered against him on his recognizance as such bail, to the justice before whom such bail was originally taken, or his successor in office, or any other justice having in his possession the docket containing such original case; of which surrender such bail shall notify the plaintiff, his agent or attorney, if resident in the county; whereupon such bail shall be exonerated from his undertaking; but if suit be brought against him, he shall be liable for costs therein up to the time of such surrender, including the dismissal thereof, and if not then paid, judgment may be rendered against him therefor. And on such surrender being made, such justice shall require such principal so surrendered, either to replevy the judgment, interest and costs, or to stand committed to jail, until he shall have replevied the same, or be otherwise discharged by due course of law; and on failure or refusal to replevy such judgment, such justice shall make out a warrant of commitment accordingly.

SEC. 78. That when any constable shall, by virtue of a writ of *capias ad satisfaciendum*, issued by a justice of the peace, commit the execution defendant to the jail of the county, a certified copy of such writ, under the hand of said constable, shall be a sufficient warrant to authorize the keeper of said jail, to receive and retain the said execution defendant in his custody, until discharged by due course of law.

SEC. 79. No plea or statement in the nature of a plea, in abatement, other than to the jurisdiction of the justice, or for matter appearing on the face of the plaintiff's statement or proceedings, nor any other plea, replication or statement in the nature of pleading, denying or requiring proof of the execution or assignment of any bond, bill, note, release or other written instrument, which is the foundation of any suit or defence, and

is specially set forth in the pleadings or statements of either party, shall be received by the justice unless supported by oath or affirmation. When any such pleading or statement denies or requires proof of any assignment, the oath or affirmation shall be, that the party has reason to believe, and does believe, that the assignment was not made before suit commenced, or not made at all.

SEC. 80. In all cases not otherwise specially provided for by this act, or some other statute of this state, it shall be lawful for any party to any judgment of any justice, to appeal therefrom at any time within thirty days from the rendition thereof, to the circuit court of the county where the same may be rendered; the appellant first filing with the proper justice, a good bond with sufficient surety, to the acceptance of the justice, payable to the appellee, in a sum sufficient to secure the debt or damages, interests and costs that have accrued before the justice and that may accrue in the circuit court, if judgment be there rendered against him, conditioned that the appellant will prosecute his appeal to effect, and pay and satisfy the condemnation money and costs which may be adjudged or awarded against him, on the appeal in such case in the circuit court, if judgment be there given against him; and no appeal shall be dismissed by the circuit court, on account of the informality or insufficiency of such appeal bond, if the appellant will, on or before the calling of the cause, file a good and sufficient bond with security to the acceptance of the court: and when an appeal is taken, it shall be the duty of the justice, if execution shall have issued, to recall the same, and to make out and certify, under his hand and seal, a true and full transcript of the judgment and proceedings before him in such case, and to cause the same, together with with the appeal bond and other papers in the case, to be filed with the clerk of the proper circuit court, within twenty days after the filing of the appeal bond with such justice; and such clerk shall file the papers and docket the case immediately after receiving the same; and if the papers be filed with the clerk ten days before the first day of the ensuing term of the court, the cause shall stand for trial at such term, otherwise the cause may be continued as other causes in such court; and from and after the time of taking the appeal, all further proceedings before the justice shall be stayed: *Provided*, that in the absence of any party praying an appeal as authorized by this section, an appeal bond, signed by the security alone shall be sufficient; and all justices of the peace, other than those living within the bounds of any corporation of a county town, shall be allowed six cents per mile for travelling to file appeal papers in the clerk's office of their respective counties, to be collected as their other fees are: *Provided also*, that in appeals taken from the judgment of any justice of the peace, to the circuit court, if the security or securities in the appeal bond, shall become apprehensive that by continuing the case, he or they will have the costs to pay, on application to the circuit court, having first given the appellant or appellants three day's

Plea of non-as-
signment, how
sworn to

Appeal

Appeal bond

Appeal not to be
dismissed for in-
formality, &c of
bond

Execution if is-
sued, to be re-
called

Transcript, &c
how sent up

Cl'k to docket
case

Appe'l to be fil'd
10 days before c.
or continued

Mileage to J P
for sending ap-
peal up, &c

Sureties in ap-
peal may object
to a continuance
unless, &c

notice, said court shall release such security or securities from any further cost; and such appellant or appellants shall give other security, to the acceptance of the court, and if he or they shall fail to give such security, the case shall not be continued, but be tried at that term, or dismissed at the appellant's costs; in which case the security of such appellant or appellants shall be accountable: *Provided*, that if any justice shall neglect to comply with the requisitions of this section, [he] shall be liable in damages, to the party injured in the sum of ten dollars, in addition to his liability on his official bond.

Other security
may be given by
appellant

Appeal, how
tried in c. court

Costs how tax'd

C. court may
authorize app'l
after 40 days, in
certain cases

Att'y at law be-
ing justice, pro-
hibited from
practici'g in cer-
tain cases

Appellant faili'g
to prosecute
appellee entitled
to judg't and 10
per cent

Ne exeat when
to issue

SEC. 81. The circuit court shall hear and determine cases brought before them, by appeal from justices, in a summary way, without a jury, unless when the amount in controversy shall exceed twenty dollars, and either party in such case require a jury, in which case a jury may be called; and the costs taxed by the justice, and set forth in the transcript, shall be taxed with the costs above; and the court shall have a discretionary power to tax the costs of the appeal in such manner as to them shall appear just and reasonable.

SEC. 82. The circuit court of the proper county, may on motion and affidavit of the party, his agent or attorney, authorize the taking of an appeal from the judgment of a justice, after the expiration of thirty days from the rendition of such judgment, if it shall appear from such affidavit or other evidence, that such party wishing the appeal, was prevented from taking the same within said thirty days, by unavoidable circumstances, or by the improper conduct of the justice rendering the judgment or having the same in possession, and that he has merits in such appeal.

SEC. 83. No attorney at law, holding a commission as a justice, and acting as such, shall be permitted to appear as attorney in the circuit court, in any case appealed from his decision, or in any state prosecution where he shall have recognized or committed the defendant to answer in such case in the circuit court.

SEC. 84. If any appellant shall fail to appear and prosecute his appeal in the circuit court, such court may, on motion of the appellee, affirm the judgment of the justice, in favor of the appellee, with ten per centum thereon and costs, and give judgment therefor; or may, on the like motion of the appellee, proceed to hear and determine the case, as in other cases of appeal.

SEC. 85. Whenever any person is about to remove from this state, without leaving sufficient property for the payment of his debts, which debts shall not be due at the time, or who has made himself liable by contract, the time of performance of which contract has not arrived, and the amount or demand shall be within the jurisdiction of a justice, the creditor or person entitled to coerce the payment of such debt, or performance of such contract, may appear before any justice of the proper county, and make oath to the circumstances in the following

form, to wit: "I, A B do solemnly swear, (or affirm) that C. D. Affidavit for ne
is justly indebted to me, or to E F for whom I am agent or at-^{ne exeat.}
torney (as the case may be) in the sum of \$ or that the said
C D is holden to me, or to E F for whom I am agent, &c. by
contract as follows: (here describe the contract, the time for the
performance of which contract has not yet arrived;) and that
I have reason to believe, and do verily believe, that the said C
D is about to remove from this state, without leaving sufficient
property for the payment or satisfaction of his just debts, (or,
without providing for the performance of his said contract;)"
which affidavit shall particularly describe the debt or contract
of the creditor or other proper person.

SEC. 86. On making, subscribing and filing with the jus-^{Writ of ne exeat}
tice, an affidavit of the above description, the justice shall issue
a writ of *ne exeat*, directed to any constable of the county,
commanding him, forthwith to take and bring before the jus-
tice issuing such writ, the defendant to shew cause why he
should not give special bail for the payment of his said debt, or
performance of his said contract.

SEC. 87. No writ of *ne exeat* shall issue in any case, until <sup>Comp'tant in ne
exeat to give b'd</sup>
the complainant applying for such writ, shall have filed his
bond with security, to the acceptance of the justice, for the
payment of the costs that may accrue on such writ, and the
damages the defendant may be entitled to, in case said com-
plainant may have procured the issuing of said writ without
cause.

SEC. 88. Any person conceiving himself aggrieved or dam-^{Suit on bond.}
nified by the issuing of any writ of *ne exeat*, shall be allowed
to bring suit on such bond; and if on trial, it shall appear that
such writ was sued out without just cause, such person shall
be entitled to recover such damages as a justice or jury may
assess.

SEC. 89. Whenever the defendant in any writ of *ne exeat* <sup>Def't taken on
ne exeat failing
or refusing to
give bail, to be
committed.</sup>
shall on being brought before the justice, refuse or fail to give
special bail to the satisfaction of the justice, the justice shall
order the party so failing or refusing to be committed to the
jail of the proper county; and the party so committed, shall at
any time after such commitment, on giving notice to the jail-
lor that he is ready to give bail according to the provisions of
this act, and actually giving bail, which shall be approved by
two justices, to be summoned by such jailor as soon as practi-
cable, and paying or securing the costs of commitment, be dis-
charged from the custody of the jailor.

How discharged

SEC. 90. If on the trial of said writ before the justice, ei-<sup>Appeal on ne
exeat.</sup>
ther party shall conceive himself aggrieved, such party may
take an appeal to the circuit court of the proper county, sub-
ject to the restrictions and conditions of this act, touching ap-
peals in other cases; and on an appeal, the proceedings and
trial in the circuit court shall be the same as if an original writ
had issued from that court; but no execution shall issue on any <sup>Execution in ne
exeat to be
stayed.</sup>
judgment rendered therein until the expiration of the time sta-
ted in the original contract for the payment of the debt, or per-
formance of the contract.

Def't not liable for costs in certain cases.

SEC. 91. No person giving special bail according to this act, shall be liable for any costs that may have accrued by proceedings had on this writ, (except the costs of commitment as aforesaid:) *Provided*, such person or his bail shall pay the debt or perform the contract, by the time specified in the original contract.

Remedy for special bail, &c.

SEC. 92. Any person having become special bail or security for any defendant, in a writ of *ne exeat*, shall be permitted at any time, to secure the principal in the same manner as in other cases; and every person bound as security for the payment of money or property, or fulfilment of any contract not complied with, shall have the same remedy against the principal, by *ne exeat*, as is provided for creditors or parties.

In trials of right of property, jury shall find the value, &c.

SEC. 93. In all cases of the trial of the right of property, the court or jury (as the case may be) shall find the value of the property claimed, for the purpose of ascertaining the jurisdiction of a superior court in deciding such case, whether on appeal or writ of error.

Surety's may object to a stay of execution in favor of principal.

SEC. 94. When judgment shall be entered against several persons, upon an instrument in writing, any of the signers of which shall have executed the same as security for the others, or any of them, and that fact shall be proven to justice rendering the judgment, no stay of execution shall be had thereon, if said security shall object to such stay, unless the principal defendant shall indemnify the said security to the satisfaction of said justice.

Ca. ad resp. may issue on sabbath

SEC. 95. A *capias ad respondendum* may be issued on Sunday, provided the plaintiff, his agent or attorney, will file an affidavit, stating a good cause of action, and that the defendant is about to remove from or quit the county, and that he verily believes the defendant will be out of the reach of process, if the issuing of the same should be deferred till another day.

Mandamus may issue to compel j. p. to enter judgment.

SEC. 96. And if any justice of the peace shall refuse to enter judgment, when by law he ought to do so, the circuit court is authorized, and it is hereby made its duty, to issue a writ of *mandamus*, to compel said justice to enter such judgment.

Suit thereon.

No stay on judgment on bond.

SEC. 97. That every person elected to the office of justice of the peace in any of the counties in this state, shall give to the clerk of the circuit court of the proper county, a bond, in such sum as the clerk may deem sufficient, not less than one thousand dollars, nor more than two thousand dollars, with good freehold security, to be approved of by such clerk, for the faithful discharge of his duty, and for the paying over on demand, to the person authorized or entitled to receive the same, all moneys that may come into his hands, as such justice of the peace, during his continuance in office; which bond shall be made payable to the state of Indiana, for the benefit of any person concerned, and may be put in suit, from time to time, in any court of competent jurisdiction, and shall not be void on the first recovery thereon: and there shall be no stay of execution on the

judgment rendered on such bond; and any justice of the peace refusing or omitting to comply with the provisions of this act, after the taking effect thereof, shall on conviction, by presentment or indictment in the circuit court of the proper county, be fined by the jury trying the case, in any sum not exceeding two thousand dollars.

Penalty for failing to give bond.

SEC. 98. That it shall hereafter be lawful for any person who may be entitled to an action on the official bond of any constable or justice of the peace for any breach of the condition of such bond, to bring an action of debt on such bond against such constable or justice of the peace and his or their securities, before any justice of the peace of the proper county, where the amount of damages claimed by the person bringing such action does not exceed one hundred dollars.

Suits on official bond of constable or justice may be brought before j. p. where the damages claimed do not exceed \$100.

SEC. 99. Any person who may bring an action on such bond against such officer and his securities, shall at least three days before the trial thereof, file before the justice before whom the same is to be tried, a succinct statement of the particular injury or wrong complained of, but he shall not be required to assign any specific breaches of the condition of such bond; and upon the trial of such cause, a copy of such bond, certified by the clerk in whose office the same is filed, shall be deemed and taken as competent evidence, or the clerk in whose office the same may be filed, may be required by either party, by a subpoena, *duces tecum*, to produce the original bond at the trial.

Statement to be filed 3 days before trial.

Certified copy of bond, evidence

Original may be produced.

SEC. 100. On the trial of such action, it shall be lawful for any such defendant or defendants, to give in evidence any and all matters of defence, under the plea of the general issue, and in all other respects the justice trying such cause shall be governed by the several acts regulating the duties and jurisdiction of justices of the peace.

Any matter of defence may be given under general issue.

SEC. 101. Any person feeling himself aggrieved by the decision of any justice of the peace, in any case hereafter tried under the provisions of the last two sections, shall be entitled to an appeal to the circuit court, under the same rules and regulations as in other cases.

SEC. 102. The provisions of the last three sections shall not be considered as affecting in any manner any of the remedies provided for in this act on the official bond of any constable or justice of the peace.

SEC. 103. That no person shall be bound to answer any summons or *capias ad respondendum*, issued by any justice of the peace in the counties of Tippecanoe, Montgomery, Owen, Hancock, Marion, Morgan, Carroll, Clinton, Shelby, Parke, Perry, Monroe, Brown, Daviess, Clay, Madison, Decatur and Warren, in any civil suit in any township other than the one in which such defendant actually resides, except as follows, to wit: 1st, where there shall be no justice in such township who can legally issue such summons. 2d, where two or more persons shall be jointly, or jointly and severally, bound in any contract, or liable for any injury and shall reside in different

Exceptions.

townships of the same county, it shall be lawful for the plaintiff to commence his or her action before a justice of the peace of that township in which any one of the debtors or other person liable, may reside, and the justice before whom such action may be brought shall issue process against such debtors, directed to any constable of his township, which process such constable shall be authorized to serve and return, and the defendants shall be compelled to answer thereto; and all such other proceedings shall be had thereon as if all the defendants resided in the township where such action was commenced. 3d, in cases of *trespass* on personal property, it shall be lawful to bring the action in the township where the trespass was committed. 4th, it shall be lawful for any justice in any of the aforesaid counties to receive as bail recognizance, or as security in stay of execution, any person or persons who shall be citizens of the county where such obligation may be required under the same rules and regulations now in force in such cases, and such bail, recognizance or security shall be made to answer and shall be proceeded against in the same manner as if they resided in the township where such obligation or obligations was or were contracted. 5th, where the defendant has not resided in the county three months and is a transient person, he, she or they shall be proceeded against as directed and required by the twenty-fifth section of this act. 6th, and if any plaintiff, his, her or their agent or attorney shall make affidavit that he, she or they are in danger of losing his, her or their debt or demand unless such defendant is arrested, in which case also, the jurisdiction of justices shall be co-extensive with the county.

Sec. 104. If the person or persons charged or to be charged in or by any note, bond, account, or other contract shall stipulate in writing that the same shall be suable or collectable in any particular township in either of the before mentioned counties except the counties of Marion, Tippecanoe, Hancock, Owen, Carroll, Clinton, Monroe, Brown, Madison, Warren, Decatur and Clay, suit may be brought thereon, before any process issued by any justice of such township against such person or persons, which shall be executed on him, her or them if found in the county in which such justice resides, and said justice shall in every other respect be governed in the same manner and have the same power and jurisdiction in the cause as if the defendant or defendants resided in and were found in said township.

Sec. 105. The following forms shall be adopted and pursued by justices, as nearly as the nature of the case will permit; but no writ, process, entry or judgment, shall be deemed invalid or set aside for want of form, if it contain the substance, viz:

FORMS FOR JUSTICES.—No. 1. SUMMONS.

State of Indiana, county, *scd:*
To any constable of township, *Greeting:* Summons,
You are hereby commanded to summon to appear before me, J H, a justice of the peace of said township, at my office therein, on the day of , at o'clock A. M. (or P. M. as the case may be) on said day, to answer , of a plea of debt (or assumpsit, or trespass, or case, or covenant,) damages not exceeding one hundred (or fifty or twenty) dollars; and of this summons make due service and return.
Given under my hand and seal, this day of 18 .
J. H. J. P. [SEAL.]

No. 2. CAPIAS.

State of Indiana, county, *scd:*
To any constable of township, *Greeting:*
Take A. B., and him (her or them) forthwith bring before Capias, me, J. H., a justice of the peace of said township at my office therein to answer C. D., of a plea of (here insert the name of the action) not exceeding (here insert the amount, according to the form of action) dollars: And of this writ make due service and return.
Given under my hand and seal this day of 18 .
J. H. J. P. [SEAL.]

No. 3. SUBPŒNA.

State of Indiana, county, *scd:*
To any constable township, *Greeting:*
Summon A. B. to appear before me J. H., a justice of the Subpœna, peace of said township, at my office therein, at o'clock , on said day, to testify in a suit wherein C. D. is plaintiff, and E. F. is defendant, on behalf of the (insert plaintiff or defendant); and this he (she or they) shall not omit, under the penalties prescribed by law; and of this writ make due service and return.
Given under my hand and seal this day of 18 .
J. H. J. P. [SEAL.]

No. 4. JUDGMENTS.

A. B. Plaintiff, }
vs. } In debt.
C. D. Defendant. }
(After noting the previous proceeding, with the constable's In debt.
return and time of trial, say)
This day came the parties (by themselves, their agents or attorneys, as the case may be,) and the cause and proceedings being fully heard and inspected, and all things touching the same: It is therefore considered, that said plaintiff (or defend-

ant) recover of said defendant (or plaintiff) the sum of , with interest thereon, at the rate of six per centum per annum, from the day of 18 , till paid, with costs of suit, taxed at ; and the defendant (or plaintiff) in mercy, &c.

Other actions.

Judgments in assumpsit, covenant, trespass or case, which all sound in damages, may be in the above form, substituting the word damages, for the word debt. If the plaintiff is to be non-suited for not appearing, say "Comes the defendant, but the plaintiff being called, comes not; nor is his suit further prosecuted: It is therefore considered, that the plaintiff be non-suited, and that the defendant go hence without day, and recover of the plaintiff his costs by him about his defence herein expended; and that the plaintiff be amerced, &c."

No. 5.
Non-suit.

If the defendant do not appear, and the case proceeds, say, "Comes the plaintiff, but the defendant, though called, comes not; and it appearing that he has been duly served with process, and the cause being fully heard and inspected, &c." as in form No. 4.

No. 6.
Judgm't vs. d'ft.
not appearing.

No. 7. GENERAL JUDGMENT FOR DEFENDANT ON TRIAL.

Judgm't on trial
without jury.

Commence as in No. 4., and on coming to the judgment, say "It is considered that the plaintiff take nothing by his suit, but be amerced for his false clamour; and that the defendant go hence, &c. as in form No. 5."

No. 8. JURY TRIAL AND JUDGMENT.

Judgm't on ver-
dict of jury.

After stating the appearance of the parties, as in No. 4. or of the plaintiff, the non-appearance of the defendant, and service of process, as in form No. 6, or the non-appearance of plaintiff, as in form No. 5, say, "and a jury being summoned at the request of the (plaintiff or defendant as the case may be) who being called, likewise come, to-wit: (here insert their names,) good and lawful men of county aforesaid, who being duly elected and sworn, well and truly to try the cause submitted to them between the parties aforesaid, and a true verdict to give, according to evidence, to the best of their judgment and ability, returned the following verdict, to wit: "We the jury find for the , (as the verdict may be.)"

"It is therefore considered, that the (plaintiff or defendant as the case may be) recover," &c. as in form No. 4. Or if the case stand on default, and the jury are sworn to inquire of damages only, after the word sworn, say, "Well and truly to inquire of, and assess the plaintiff's damages in said cause," &c. in which case their verdict will be, "We the jury assess the plaintiff's damages at .". If the jury try the cause, on an issue made between the parties, they are to find for the plaintiff or defendant (as the case may be) so much in debt or damages, as the nature of action or defence may require; or to find generally for the defendant.

No. 9. JUDGMENT IN REPLEVIN, FOR PLAINTIFF.

"It is considered that for the tortuous taking and unlawful detention, (or the unlawful detention, as the case may be,) complained of by the plaintiff, the said plaintiff recover of the defendant the sum of , for his damages, sustained by reason thereof, with costs of suit taxed at ; and the defendant in mercy, &c."

Judgment for
plaintiff in re-
plevin.

If the defendant succeed in his defence, before the justice or jury, there will be a general verdict and judgment in his favor, "that the defendant go hence without day, and recover of the plaintiff his costs," &c. as in forms No. 5 and 7.

If the defendant shall have pleaded a plea entitling him to a judgment for a return of the property replevied, to wit: a plea of property in himself, or any person other than the plaintiff, at the time of suing out the writ of replevin, and such plea be found true, the judgment will read, "It is therefore considered that the defendant have return of the goods and chattels replevied (or such part of them as may be adjudged of him,) to-wit; (here describe them,) agreeably to law; and that he recover of the plaintiff his costs," &c. as above.

Judgm't for de-
fendant in reple-
vin.

No. 10. FIERI FACIAS.

Fieri facias.

State of Indiana, county, sct:

To any constable of township, Greeting:

Whereas, A. B. obtained judgment against C. D., before , a justice of the peace for said township, for , with interest thereon, at the rate of six per centum per annum, from the day of till paid, together with costs of suit taxed at , on the day of : You are therefore commanded (adding here, in case of an alias fi. fa., "as before commanded," or, in case of a pluries, "as often before commanded") that of the goods and chattels of said C. D. in your county, you cause to be made the said debt (or damages, as the case may be,) interest and costs, and accruing costs, by distress and sale thereof, returning the overplus, if any, to said C. D.: And of this writ make legal service and due return to me at my office in said township, within thirty days from this date.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

No. 11. CAPIAS AD SATISFACIENDUM.

State of Indiana, county, sct:

To any constable of township, Greeting:

(Recite the judgment, as in a fi. fa., No. 10, and say,) you Capias ad satis- are therefore commanded, that you take the body of said C. D. to satisfy to said A. B. the debt (or damages,) interest and costs, and accruing costs, and commit said C. D. to the common jail of said county, there to be detained until said debt (or damages) interest and costs be fully paid and satisfied, or he

be otherwise duly discharged: And of this writ make legal service and due return.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

No. 12. AFFIDAVIT FOR A STATE WARRANT.

Affidavit for
state warrant.

State of Indiana, county, *sct:*

Before me, A. B., a justice of the peace of the county aforesaid, this day personally came C. D., of , who being by me duly sworn, saith, that on the day of , at the county aforesaid, E. F., late of said county, did (here describe the crime or offence,) or, after setting forth the time and place as above, after the word county; say, a certain, (here describe the crime or offence, assault and battery, larceny, or the like) was perpetrated on the body (or goods) of G. H., and that he verily believes a certain E. F., late of said county, is guilty of said offence, or that he has been aiding and assisting in the commission thereof; and further saith not. (signed) C. D.

Subscribed and sworn to this day of 18 , before me
A. B., J. P.

No. 13. STATE WARRANT.

State warrant.

State of Indiana, county, *sct:*

To any constable of said county, *Greeting:*

Whereas, complaint has been made before me, J. H., a justice of the peace of the county aforesaid, on the oath of A. B., that on the day of , at the county aforesaid, E. F., late of said county, did (here describe the offence, as in the affidavit:) You are therefore hereby commanded to take E. F., and him forthwith bring before me, or some other justice of said county, to answer to said complaint, (or if the warrant be issued on view without complaint, say, "for said offence," instead of complaint,) and be further dealt with according to law.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

No. 14. SEARCH WARRANT.

Search warrant.

State of Indiana, county, *sct:*

To any constable of said county, *Greeting:*

Whereas, it appears to me, J. H., a justice of the peace of said county, by the oath of A. B., that the following goods and chattels, to-wit: (here describe them) have within days last past (or were, on the day of ,) by some person or persons unknown, been feloniously stolen, taken and carried away out of the hands and possession (or from the premises) of C. D., of the county aforesaid; and A. B. doth, on oath (or affirmation) declare that he verily believes that said goods or part thereof are concealed (in, on, or about the house or premises of E. F.; describing the place to be searched) in said county.

These are therefore, to command and authorize you, with

the necessary and proper assistance, to enter into said (here describe the house, premises or other place to be searched,) and there diligently search for said goods and chattels, and if the same, or any part thereof be found, on such search, bring the same, as also the said E. F., forthwith before me or some other justice of said county, to be disposed of and dealt with according to law. And of this writ make due service and return.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

The affidavit for a search warrant may be substantially the same as the introductory or reciting part of the warrant as laid down in the above form, and should always name the suspected person, if the affidavit can safely do so.

No. 15. WARRANT FOR SURETY OF THE PEACE, &c.

Peace warrant.

State of Indiana, county, *sct:*

To any constable of said county, *Greeting:*

Whereas, A. B. hath this day made oath before me, J. H., a justice of the peace of said county, that he hath been threatened by C. D. of said county, and verily believes that said C. D. will do some bodily injury to himself (or family; or destroy his property, or procure some other person to do so as the case may be;) and that he doth not make complaint through malice, or for mere vexation: Whereupon he hath prayed surety of the peace, &c.

You are therefore hereby commanded to apprehend said C. D., and bring him forthwith before me, or some other justice of said county, to find surety for his personal appearance, at the next circuit court to be holden in and for said county, and in the mean time to keep the peace generally, and especially towards said A. B., (and his family if required.)

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

(The above form shews what is necessary in the affidavit.)

No. 16. RECOGNIZANCE.

Recognizance.

State of Indiana, county, *sct:*

Be it remembered that on the day of , in the year one thousand eight hundred and , A. B. and C. D. personally appeared before me, J. H., a justice of the peace of said county, and jointly and severally acknowledged themselves to owe to the state of Indiana, the sum of dollars, to be levied of their, and each of their goods and chattels, lands and tenements, if default be made in the condition following, to-wit: The condition of this recognizance is such that if said A. B. shall personally appear at and before the next circuit court to be holden in and for said county, on the first day of the term, then and there to answer said state on a complaint (or charge, as the case may be) of an assault and battery of E. F. (or larceny of the goods

Of defendant.

and chattels of E. F., or other crime or offence; as may be made against him on the oath of E. F., (or on view by me, the justice aforesaid,) abide the judgment of the court, thereon, and not depart without leave, then this recognizance to be void, otherwise in full force in law.

Taken and acknowledged before,
and approved by me, at the
county aforesaid, this day } (Signed) A. B. [SEAL.]
of , 18 } C. D. [SEAL.]

J. H., J. P.

Of a witness.

If the recognizance be for the appearance of witnesses, before the circuit court, vary the condition, so as, after the words "first day of the term," to read "to give testimony on behalf of the state, on such matters as may be then and there required of him, and not depart thence without leave, then this recognizance to be void," &c.

Before j. p.

If it be for the appearance of a defendant or witness before a justice, vary the condition accordingly.

No. 17. MITTIMUS OR COMMITMENT.

Mittimus or
commitment.

State of Indiana, county, sc:

J. H. a justice of the peace of said county, to the keeper of the jail of said county, *Greeting:*

Whereas, A. B. on the day of in the year , personally appeared before me, the justice aforesaid (or before J. H. a justice of said county, as may be,) and made oath that on the day of in the year , at the county aforesaid, one E. F. did (here insert the charge fully, as sworn to, and in cases of view, without complaint, make the necessary alteration); and whereas, also, said E. F. hath been arrested on said charge, and brought before me, and after proper hearing and deliberation, hath been by me adjudged guilty: (and if the offence be bailable, and the defendant is committed for want of security, say, and required to give bail, in the sum of , for his appearance at the next circuit court of said county, to answer to said charge, or in default thereof, to stand committed, &c. and having failed (or refused) to find or give such bail.

Therefore, in the name and on behalf of said state, I command you that you receive said E. F. into your custody, in the proper jail of said county, there to remain until delivered from your custody by due course of law.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

If the commitment be for further examination, or for trial before the justice, make the necessary alteration; inserting the order of bail, and failure to give it when the commitment is for want thereof.

No. 18. WRIT OF ATTACHMENT.

Attachment.

State of Indiana, county, sc:
To any constable of township, *Greeting:*

Whereas, A. B. hath made oath, that C. D., late of said county, so absconds, (or conceals himself,) that the ordinary process of law cannot be served upon him; and that said C. D. is indebted to said A. B. in the sum of (here describe the debt or demand, as in the affidavit:)

You are therefore hereby commanded to attach the goods, chattels, rights, credits, moneys and effects of said C. D. in your county, to be kept and disposed of according to law. *Garnishee.* (And in case of an affidavit against a garnishee, say either in the writ of attachment, or a separate summons;) "and whereas said A. B. hath made oath that E. F. of said county is indebted to said C. D. (or has property, money, effects or credits of said C. D. in his hands, as the case may be:) You are therefore hereby commanded to summon said E. F. to appear before me J. H., a justice of said township, at my office therein, on the day of , at o'clock , then and there to answer, under oath, touching such indebtedness (or the property, money, effects or credits,) of said C. D., within his possession or knowledge: And hereof make legal service and due return to me, at my office aforesaid, within days herefrom.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

No. 19. OATH FOR LANDLORD'S WARRANT.

Oath for land-
lord's warrant.

State of Indiana, county, sc:

A. B. being duly sworn, says, that C. D. is justly indebted to him, the said A. B. (or to E. F. for whom said A. B. is agent or attorney) in the sum of , being years (or months or weeks) rent of (here describe the premises,) situated in township, in said county, [payable in , on the day of ;] and that said affiant has reason to believe, and does verily believe, there will be danger of losing the said debt, or rent thus due and in arrear, by proceeding to collect the same in the usual way of collecting ordinary debts: And further saith not. (Signed) A. B.

Subscribed and sworn to before me, a justice of said county, at this day of 18 .

J. H., J. P.

No. 20. LANDLORD'S WARRANT.

Landlord's war-
rant.

State of Indiana, county, sc:
To any constable of township, *Greeting:*

You are hereby commanded to distrain the goods and chattels of C. D. in or upon (here describe the house or premises,) situated in the township and county aforesaid, for the sum of , being years (or weeks or months, &c.) rent (or part

thereof, as may be) due and payable in , on the day of , to A. B. for the same, as by affidavit of appears; and proceed thereon, for the recovery of said rent as the law directs.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

Replevin.

No. 21. WRIT OF REPLEVIN.

State of Indiana, county set:

To any constable of township, *Greeting:*
You are hereby commanded, that you take into your custody the following goods and chattels, to-wit: (here describe them, with their value, as in the affidavit) and them safely keep until A. B. plaintiff herein, shall satisfy and secure you by sufficient pledges, that he will well and truly prosecute to effect this writ of replevin against C. D. defendant herein, and return said goods and chattels to said C. D., in case such return be awarded, and pay to said C. D. such damages as may be awarded him, if he succeed in his defence herein: And that, on being so satisfied and secured, you deliver said goods and chattels to said A. B., and summon said C. D. to appear before me, J. H., a justice of said township, at my office therein, on the day of , at o'clock , to answer said A. B. of and concerning the tortuous taking and unlawful detention (or unlawful detention) of said goods and chattels, to his damage dollars, as is said; and of this writ make due service and return.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

No. 22. JUDGMENT IN STATE CASES.

Judgment in state case.

After entering the finding of guilty, by the jury or justice, say, "It is therefore considered, that said state of Indiana recover of said A. B. the sum of , fine for the offence aforesaid, with interest thereon till paid, as well as the costs of the prosecution against him, taxed at ; and that said A. B. stand committed till said fine and costs be paid or replevied, or he be otherwise duly discharged: And the said A. B. in mercy, &c.

No. 23. SCIRE FACIAS, (on Transcript.)

Scire facias on judgment.

State of Indiana, county, set:

To any constable of township, *Greeting:*
Whereas, on the day of , A. B. obtained judgment before C. D. a justice of the township of , county of , and state aforesaid, for the sum of , debt (or damages,) with interest thereon from the day of till paid, and costs of suit, taxed at ; costs accrued since ; whole costs ; making in all, the sum of ; as by transcript thereof, duly certified, appears: And whereas said judgment is still

in full force, unreversed and unsatisfied, and execution thereof yet remains to be made, as is on the part of said A. B. alleged:

You are therefore hereby commanded that you summon said , to appear before me, J. H., a justice of said township, at my office therein, at o'clock , on the day of , to shew cause why execution shall not issue against him, for the debt, interest and costs aforesaid. And of this writ make due service and return.

Given under my hand and seal this day of 18 .
J. H., J. P. [SEAL.]

A *scire facias* against bail for stay of execution, or a justice or constable for not paying over money collected, may be substantially the same as above, making the necessary variation in the recital, and saying "shew cause why said A. B. ought not to have judgment and execution against him, for said sum of (adding, in case of a justice or constable, with ten per centum thereon,) with interest and costs," &c.

Scire facias in other cases.

No. 24. JUDGMENT ON SCIRE FACIAS.

"Come the parties (or comes the plaintiff, &c. as in the Judgment on above forms,) and the cause being fully heard and inspected, &c. it is considered that said A. B. have execution (or judgment and execution) against said E. F. for , the debt (or damages) aforesaid, with interest thereon from till paid, and the costs aforesaid, making the sum of , exclusive of interest, together with his costs by him about his suit herein expended, taxed at : And said E. F. in mercy, &c." (Add, in case of a justice or constable, together with ten per centum, thereon, &c.)

CHAPTER LIX.

AN ACT to provide for making partial payments on canal and school lands.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter any person or persons being the owners of any of the Wabash and Erie canal lands which the state of Indiana may have sold, and which they hold the certificates of purchase for, can pay on said lands, at the same time they are required to pay in the interest thereon, any portion or parts of the purchase money yet due the state on any tract of said canal land: *Provided*, that they shall be required in making such payment, to pay in one-fourth, one-half or three-fourths of the amount of the original purchase money of each tract agreeably to the certificate thereof, and that intermediate amounts will not be received.

SEC. 2. It is hereby made the duty of the commissioners having charge of the canal lands, and the collection of the interest due the state on the same to receive payments when rendered as herein provided and to receipt therefor in like manner as he is authorized by law to receive and receipt for the interest due on canal lands: *Provided*, that all interest up to the time of such payment shall first be paid: *And provided also*, that the provisions of this act be executed to the purchases of school lands in the several counties of this state.

All laws and parts of laws coming within the purview of this act be and the same are hereby repealed.

This act to take effect and be in force from and after its passage.

CHAPTER LX.

AN ACT declaring what laws shall be in force.

[APPROVED JANUARY 2, 1818.]

The common law of England, &c. in force.

Be it enacted by the General Assembly of the state of Indiana, That the common law of England, all statutes or acts of the British parliament made in aid of the common law, prior to the fourth year of the reign of King James the first, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter, thirteenth Elizabeth, and ninth chapter, thirty-seventh Henry eighth, and which are of a general nature, not local to that kingdom, and not inconsistent with the laws of this state; and also, the several laws in force in this state shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

CHAPTER LXI.

AN ACT to provide for carrying the laws into effect in new counties.

[APPROVED FEBRUARY 17, 1839.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any act passed at the present or any succeeding session of the general assembly of this state, erecting any new county, shall take effect, it shall be the duty of the governor, or person exercising the power of governor, to issue a writ of election, directed to some person in such new county, whom he shall appoint to act as sheriff until the next general election, and until a sheriff is chosen and qualified, requiring him to cause an election to be held at such place

The governor shall appoint a sheriff, whose duty it shall be to hold an election for certain county officers.

or places in said county as he may direct, on such day as may be designated in the writ of election, for the purpose of electing two associate judges of the circuit court, one clerk of the circuit court, one recorder and three commissioners of the county.

SEC. 2. The person to whom such writ of election is directed, shall have full power, and is hereby required to appoint the necessary officers of such election, which officers so appointed, shall act under the same rules, and be subject to the same penalties as are or may be provided by law for regulating general elections, or the election of such officers in old counties, and shall make return to the person acting as sheriff, the Wednesday following, at such place in the county as he may have directed.

The sheriff shall appoint officers of election.

When said officers shall make return thereof.

SEC. 3. The person to whom the writ of election is directed in a new county, shall give at least ten days notice of the time and place or places where such election is to be held, and also of the place where the return is to be made to him, by setting up written notices thereof in three of the most public places in each election district he may establish in such county; and on the return of the election being made to him, and the votes being compared according to law, he shall give to each of the commissioners a certificate of his election, and the time he is elected to serve, having due regard to the law; and shall also, within ten days thereafter, forward to the office of the secretary of state, a certificate of the persons elected as associate judges, and clerk of the circuit court, and recorder of the county; which persons shall be commissioned and qualified into office in all respects as is provided by the law and constitution of this state: *Provided however*, the person acting as sheriff shall be fully authorized to administer such oaths as are required by the constitution and laws of this state, certified copies of which he shall file in the office of the clerk of the circuit court, whenever it shall be established.

Certificate of election, to whom given.

Sheriff authorized to administer oaths.

SEC. 4. All officers falling within the bounds of a new county, shall continue to exercise the duties of their several offices until they are succeeded by others legally qualified to take their places.

Officers to continue in the performance of their duties.

SEC. 5. No suit or action of any nature whatsoever, commenced in any court of record, or before any justice of the peace, shall in any wise be affected by the laying off of any county; and all taxes that may be due the state or any county in the state, at the time of organizing any new county, shall be collected in the same manner as if such county had not been organized.

Civil and fiscal proceedings in no way affected by the erection of a new county.

SEC. 6. This act to take effect and be in force from and after its passage.

AN ACT supplemental to an act to provide for carrying the laws into effect in new counties.

[APPROVED DECEMBER 28, 1827.]

Be it enacted by the General Assembly of the state of Indiana, That in all contests of elections for county and township officers, at their first election in new counties, hereafter to be laid off, it shall be lawful for such contested election to be decided at the nearest county seat to the county where such contested election originated. And the commissioners or persons doing county business in the county where such contest is to be tried, are hereby authorized to hear and determine the same, which shall be governed by the law regulating general elections, except the county commissioners or persons doing county business, when called together to receive testimony of contested elections shall be judges to decide the contested election of such county or township officers aforesaid.

CHAPTER LXII.

AN ACT to facilitate the business of the legislature.

[APPROVED JANUARY 2, 1834.]

President of the senate &c. authorized to administer oaths. SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That after the organization of any general assembly hereafter, the president of the senate, speaker of the house of representatives, and the several chairmen of the respective standing committees, in either branch of the legislature, shall have power to administer oaths, and take affidavits and depositions, in all cases where the facility of legislative business may require it.

False swearing. SEC. 2. That in all cases where an oath shall be administered, as provided for by this act, the deponent or affiant shall be liable for false swearing, in the same manner as is provided in the twenty-second section of the act entitled, "an act relative to crime and punishment."

CHAPTER LXIII.

AN ACT for the Incorporation of County Libraries.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That whenever the citizens of any county, shall be desirous of incorporating a county library, it shall be lawful for the qualified voters of such county, twenty days previous notice having been given, by putting up at least one manuscript advertisement in each township of such county, one of which shall be at the place where courts are usually holden, to assemble themselves at the court house or place where courts are usually holden, and when so assembled, and having chosen a chairman and secretary, shall proceed to elect seven trustees for the county library of such county, to serve for the term of one year from and after the first Monday of September next ensuing their election, and until their successors shall be elected and qualified; and all elections for trustees shall be annual, on the first Monday of September, as their terms of office may respectively expire: *Provided,* that wherever trustees of the county library of any county, or their successors in office, have been or shall hereafter be elected, pursuant to any law of this state in force at the time, and their successors in office shall not have been, or shall not hereafter be elected and qualified as required by law, such trustees or successors first named, shall hold their said offices and act as such until their successors are duly elected and qualified; and any act or acts of any such trustees or successors (first named) heretofore performed, (after the failure to elect and qualify their successors as aforesaid,) are hereby legalized and affirmed, to the same extent and in the same manner, as if those performing the same as aforesaid, were at the time of such performance legal trustees of such county library, and no further or otherwise.

SEC. 2. The trustees elected in manner aforesaid, and their successors in office, shall each receive from the chairman of said election, a certificate certifying that they were duly elected, attested by the secretary of said election; and shall before entering upon the duties of their office, each take an oath or affirmation, before some person authorized to administer the same, for the faithful performance of the duties of their office; and it shall be the duty of the person administering the same, to endorse a copy thereof on the back of said certificate.

SEC. 3. The trustees chosen in manner aforesaid, shall appoint one of their number to be president at their meetings, and the president and trustees appointed as aforesaid, are hereby created and declared, a corporation and body politic, with perpetual succession, by the name and style of the president and trustees of the county library, and shall in

Seal. their corporate capacity, be able and capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court of justice, and to make and use a common seal, and the same to change and alter at pleasure; and when vacancies shall happen by the death, resignation or removal from office of the president, or any of the trustees as aforesaid, the board doing county business shall appoint another person or persons to fill such vacancy or vacancies, until the election of trustees thence next ensuing, and until their successors shall be elected and qualified.

Sheriff shall notify election of trustees. SEC. 4. And it shall be the duty of the sheriff of such county, at least three weeks before the term of service of the president and trustees shall expire, to give notice that there will be an election held for the purpose of electing seven trustees for the county library; which election shall be held and conducted in all respects, agreeably to the provisions of this act.

Elections, how conducted. SEC. 5. The president and trustees qualified in manner aforesaid, shall elect by ballot, a librarian and treasurer, and such other subordinate officers as they may think necessary, and may remove any such officer at their pleasure, and shall have power from time to time, and at all times thereafter, to make such by-laws, ordinances and regulations in writing, not inconsistent with the constitution and laws of this state and of the United States, as may be necessary for the government of the institution. The treasurer shall give bond with such security as the president and trustees shall direct.

Librarian and other officers. By-laws. Treas'r's bond. County agent shall pay over moneys due county library. SEC. 6. The agent of any county, in which there may be an incorporation as aforesaid, shall on the presentment of an order, signed by the president and attested by the clerk thereof, forthwith pay to the treasurer of the same, all moneys in his hands, due said library; and on failure thereof, said treasurer shall proceed against such delinquent agent, by motion in the circuit court, having given ten days previous notice thereof; and the court aforesaid, shall give judgment against said agent and his securities, for such sum as may be found due to said county library, together with interest and costs; and execution without stay thereon shall be awarded.

Remedy vs. ag't for failure to pay over. SEC. 7. In case of the absence of the president at any meeting of the trustees aforesaid, the said trustees shall have power to elect one of their own body to serve as president *pro tempore*, until the president shall attend; provided that not less than a majority of the trustees elected or appointed as aforesaid, shall form a quorum to transact business.

President pro tem. Quorum. Library funds, how expended. SEC. 8. The president and trustees of the county libraries as aforesaid, are hereby authorized to demand and receive, upon their order, all moneys that may be paid into the treasury of their corporation, for the benefit of a county library for such county, and lay out the same in the purchase of books, maps, &c. and such other property, real and personal, as they may think conducive to the advancement and benefit of such corporation: *Provided however*, that the said corporation, shall

Proviso limiting estate to be held by corporation.

not in their corporate capacity, at any time hold more than the value of one thousand dollars, in real and personal property, books excepted.

SEC. 9. Ten per centum of the nett proceeds received from the sale of all in and out lots, sold by order of the boards doing county business, as the property of any county, in or adjacent to any town, being a county seat in this state, and ten per cent. on all donations made to procure the location of any county seat, shall be reserved for the use of a public library for such county, to be collected and paid over as provided for in this act; and for the purpose of more effectually securing the ten per centum arising from the sales of town lots, at each county seat, established by the laws of this state, the county agents of such counties severally, shall not be subject to obey any order made by the different boards doing county business, which would authorize the said agents to receive any thing but specie or its equivalent, for the ten per centum reserved by law on the amount of the sales of lots at such county seats, for the use of county libraries. And in all cases where any county agent may have heretofore, in obedience to the orders of the board doing county business of his proper county, taken and received county orders, in payment of debts due for town lots, in or adjacent to any county seat established as aforesaid, it shall and may be lawful for such agent to apportion the amount of the ten per centum due such county library, (and received in county orders as aforesaid) on all the debts still due such county, for town lots, according to the sums each individual may be owing; and until such agent may have a reasonable time to collect such sum due, no action shall lie against him, by the board of county trustees of the county library of his county, for failing to pay such library fund.

SEC. 10. Should it hereafter happen in the sale of town lots, in any county in this state, where by law a reservation of ten per centum on the amount of sales had been made, for the use of a county library, that the agent of such county has paid over the whole amount, or all that he has received of the purchase money of any lots, into the county treasury of his county, without reserving and deducting the said ten per centum for the use of the county library, such county shall be held responsible to the president and trustees of the county library, for the amount of the ten per centum aforesaid; and it shall be the duty of the board doing county business in said county, on satisfactory proof of the above state of facts, by an order entered on their records, to direct the treasurer of their county, to pay the full amount of the ten per centum so received, to the president and trustees of the county library, out of any moneys belonging to said county not otherwise appropriated.

SEC. 11. That hereafter no county library, the books of which have been purchased by the funds in this act reserved and set apart for that purpose, shall be liable for any debts of the county, or be subject to seizure by execution or otherwise, in any case whatever.

10 per cent to be reserved for county library on sales of lots at county seat.

Per cent. payable in specie.

How agent shall collect library fund, where county orders have been received for lots sold &c.

How library fund shall be refunded by the county where the agent has not reserved it.

Library books exempt from execution on judgment vs. the county.

CHAPTER LXIV.

AN ACT for the incorporation of public libraries.

[APPROVED FEBRUARY 17, 1838.]

Public library
may be estab-
lished.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the inhabitants of any city, town, village or neighborhood in this state, or any part of them, whenever they have subscribed the sum of fifty dollars for a public library, may assemble themselves for the purpose of holding an election.

SEC. 2. And if two-thirds of the subscribers are present, they may proceed to choose by voice, a chairman, who shall preside at that meeting, and a clerk, who shall keep a record of the same.

Shareholders
may choose di-
rectors.

SEC. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose by ballot seven directors, and to agree upon a name by which their library shall be known: the directors shall appoint one of their number to be president at their meeting, who shall have no other than a casting vote.

Chairman or
clerk shall
swear to the
statement of
their proceed'gs

SEC. 4. A true statement of the proceedings of such meeting, including the amount subscribed, and the number of subscribers present at the meeting, shall be sworn to, or affirmed to before some justice of the peace of the county, by the chairman or the clerk, provided for by the second section of this act; and it shall be the duty of such justice, to certify on such statement, that it was sworn to or affirmed to before him.

SEC. 5. It shall be the duty of the recorder of the county, to record the said statement in his book of record when required.

May be incorpo-
rated.

SEC. 6. After such statement of proceedings is duly recorded according to this act, the president and directors, and their successors forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office. They shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, or person or persons whatsoever, in all manner of suits, actions, complaints, pleas, causes and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic may or can do: *Provided however*, that nothing in this act contained, shall be so construed as to authorize any library company incorporated in this state, to issue notes or bills of credit, payable to any person or persons on his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes or due bills whatever. Except the first election of directors, the annual election forever thereafter, shall be held on the first Monday in January; but if any annual election should be omitted, the

Shall not issue
notes or bills of
credit.

directors shall remain in power until the next annual election, and until successors shall be chosen.

SEC. 7. Such library or libraries shall be governed and regulated by such by-laws as may from time to time be made by the president and directors of the same, not inconsistent with the constitution and laws of this state; who shall have power to alter, amend, abolish and renew any such by-law or by-laws at pleasure.

SEC. 8. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure. They shall have power to levy a tax on the shareholders, provided such tax does not exceed one dollar on each share, in any one year; nothing however, in this act, shall be so construed as to prevent a majority of two thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Further power
of the president
and directors.

SEC. 9. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body, and the director or directors, by them elected, shall serve until the next annual election thereafter, and until others are elected in their stead.

SEC. 10. They shall have power to receive by donation, any books, moneys, papers, or lands, or any other thing or things: *Provided*, such donation, or the rent or interest thereof, be applied to no other purpose than the true interest of the library on which it was bestowed, according to the true intent and meaning of this act: *Provided however*, that they shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars in land, or any other property, except books and those things appertaining to a library.

May receive do-
nations.

SEC. 11. This act shall not in any way or manner be so construed, as to effect any county library provided for in the constitution of this state.

Not to affect
county libraries.

CHAPTER LXV.

AN ACT concerning the State Library.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the secretary of state be, and he is hereby appointed state librarian to hold his office for and during the time for which he is elected; that he shall keep said library in the room now fitted up and occupied as such in the state house, which library shall be kept open at all times during the ses-

Sec'y of state li-
brarian ex of-
ficio.

sion of the legislature, (Sundays excepted,) on each day from nine o'clock in the morning until seven in the evening and on each and every Saturday during the recess, from ten o'clock, A. M. until four o'clock, P. M.

Who entitled to use of library.

SEC. 2. Said library shall be for the use of the members of the legislature, the secretaries and clerks of each house, the officers of the several branches of the executive department of the state government, judges of the district and circuit courts of the United States, district attorney, judges of the supreme court of the state, the president judges of the circuit courts, adjutant and quarter-master generals, principal and assistant engineers on the public works, and all officers of state whose appointment to office is vested in the legislature, or the governor and senate, when any of them may be at the seat of government.

Exchange laws.

SEC. 3. Said librarian shall, and is hereby authorized and required to exchange laws with the several states and territories of the Union; and shall have such laws bound and placed in the state library; and he shall further cause to be bound and placed in said library eight copies of the journals and laws of each session of the general assembly, and the expense attending the same, on his certificate, shall be paid out of the state treasury.

Rules to be adopted & published.

SEC. 4. It is further made the duty of said librarian to fix the time during which any person authorized may detain a book from said library; and further, to make and ordain from time to time such rules and by-laws for the government of said library, as will be best calculated to make the same useful to those interested, and a copy of such rules and by-laws shall at all times be set up in a conspicuous place in the library room for the inspection of every visitor; and all fines and forfeitures accruing under and by virtue of such by-laws shall be recoverable by action of debt, brought before any justice of the peace, or court having jurisdiction of the amount in the name of the state of Indiana, for the use of the state library; and on all such trials the librarian shall be a competent witness, and his entries to be made as hereinafter directed, shall be full and complete evidence of the delivery of the book or books, and of the date thereof.

Duty of librarian

SEC. 5. The person acting as secretary of state shall be librarian, and it shall be his duty to make regular entries in proper books to be kept for that purpose of all books taken out and returned, and of all penalties and fines assessed or collected under this act or the by-laws established for the government of the library. He shall also keep a catalogue of the books belonging to the library in a book kept for that purpose, delivering them to, and receiving them from the persons entitled to receive them. He shall also keep an account current with the treasurer of state annually, reporting to both branches of the general assembly the disposition of the funds appropriated and the additions to the library, and how made. It shall be his duty to collect all fines and forfeitures accruing to the library by suit or otherwise.

Shall report to legislature.

SEC. 6. There is hereby appointed for the increase of the

state library in addition to the sums due for the purchase of two hundred books already made, the sum of two hundred dollars annually, which sum shall be audited and paid to the librarian to be by him expended in the purchase of books for the use of said library, which books shall be works on history and science of a standard character.

CHAPTER LXVI.

AN ACT to authorize the incorporation of Lyceums.

[APPROVED JANUARY 26, 1832.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That twenty or more citizens of any county of this state, desirous of forming a lyceum, may constitute themselves a body politic and corporate, by such name as they shall adopt, for their mutual improvement in the arts and sciences.

SEC. 2. Any lyceum may form such constitution and by-laws as may be thought proper for its government: *Provided,* the same be not inconsistent with the constitution and laws of this state.

SEC. 3. Previous to exercising corporate powers, the constitution of the lyceum, signed by at least twenty citizens of the county, shall be recorded by the recorder of the proper county; and by the name therein expressed, such lyceum may sue and be sued, plead and be impleaded, answer and be answered unto, in all courts whatever; and may hold real and personal property, not exceeding three thousand dollars in value, and may exercise all powers, which to corporate bodies belong for the purpose of promoting the diffusion of useful knowledge.

CHAPTER LXVII.

AN ACT in relation to proceedings upon writs of mandamus and informations in the nature of quo warranto.

[APPROVED FEBRUARY 19, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That when any writ of mandamus shall be issued out of any circuit court of this state, person, body, or tribunal to whom the same shall be directed and delivered, shall make return to the first writ of mandamus; and for neglect so to do shall be proceeded against as per contempt.

May plead to return.

SEC. 2. Whenever a return shall be made to any such writ, the person prosecuting such writ, may demur a plead to all or any of the material facts contained in the said return; to which the person making such return shall reply, take issue or demur, and the like proceedings shall be had therein for the determination thereof as might have been had, if the person prosecuting said writ had brought his action on the case for a false return.

Issue of trial.

SEC. 3. Issues of fact joined in any such proceeding shall be tried in the county within which the material facts contained in the *mandamus* shall be alleged to have taken place.

Verdict of payment.

SEC. 4. In case a verdict shall be found for the person suing out such writ, or if judgment be given for him on demurrer or by default, or for want of a replication or any other pleading, he shall recover damages and costs in like manner as he might have done in such action on the case as aforesaid; and a *peremptory mandamus* shall be granted to him without delay.

Recovery a bar to any other action.

SEC. 5. A recovery of damages by virtue of this act against any party who shall have made a return to a writ of *mandamus*, shall be a bar to any other action against the same party for the making of such return.

C. c. may enlarge the transfer return.

SEC. 6. The circuit courts shall have the same power to enlarge the time for making a return and pleading to such writ and for filing any subsequent pleadings as in personal actions.

Officers and corporation liable for intrusions.

SEC. 7. Whenever any person or persons shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state; or any office in any corporation created by the authority of this state; or whenever any public officer, civil or military, shall have done or suffered any act which by the provisions of law shall work a forfeiture of his office; or where any association or number of persons shall act within this state as a corporation without being legally incorporated, it shall be lawful for the prosecuting attorney of the proper circuit court to exhibit and file in said court one or more informations against such person or persons in the nature of *quo warranto* on the relation of any person or persons desiring to prosecute the same who shall be mentioned in such information or informations as the relator or relators against the person, persons or associations thus charged, and to proceed therein in the manner usual in such cases.

Pros. attorney may file information.

SEC. 8. If it shall appear to such court that the several rights of divers persons to the same office or franchise may be determined, on one information, it shall be lawful for said court to grant leave to exhibit one such information against several persons in order to determine their respective rights as aforesaid: and such person or persons against whom such information shall be filed, [shall appear and plead at the same time at which such information shall be filed,] unless the said court shall give further trial when necessary to plead; and the person or persons suing out or prosecuting such information, shall proceed thereupon without unnecessary delay.

Information may be filed against several persons.

SEC. 9. Whenever any person or persons against whom

any such information shall be exhibited shall be found or adjudged guilty of an usurpation or intrusion into or unlawfully holding or exercising any office civil or military, or any franchise within this state; or any office in any corporation created by the authority of this state; or whenever any public officer, civil or military, thus charged shall be found or adjudged guilty of having done or suffered any act which by the provisions of law shall work a forfeiture of his office; or where any association or number of persons shall be found or adjudged guilty of having acted as a corporation without being legally incorporated, it shall be lawful for said court to give judgment of *ouster* against such person or persons whether they be natural persons, or a corporation, or an association of persons claiming to act under corporate powers, and altogether to exclude such person or persons from such officer's franchises, privileges, or corporate rights, and in cases of corporations that the same be dissolved.

Def'ts found guilty shall be removed from office, &c.

Judgment of ouster.

SEC. 10. If judgment be rendered upon any such information against any person or persons charged with usurping, intruding [into], or unlawfully holding or exercising any public office as aforesaid, or any franchise within this state, or any office in any corporation created by the authority of this state, or any person whose office is forfeited, the court trying the same and rendering such judgment shall tax costs therein on favor of the relator or relators in such information: said court may also assess a fine against any such persons thus charged and against whom such judgment shall be rendered for any such usurpation, intrusion into or unlawfully holding or exercising any such office or franchise, and in case judgment be given for the defendants, costs shall be taxed against such relator or relators.

SEC. 11. If judgment be rendered against any corporation or against any person claiming to be a corporation upon any such information, the court shall take costs therein as in other cases, and may cause them to be collected by execution against the persons claiming to be a corporation, or attachment against the directors or other officers of any such corporation. And whenever any such judgment shall be rendered, the court of chancery shall have power to restrain such corporation, to appoint a receiver of its property and effects and to take an account and make distribution thereof among its creditors, and it shall be the duty of the prosecuting attorney of the court immediately after the rendition of any judgment to institute proceedings for that purpose in said court.

How judgment may be rendered against corporations.

Receiver may be appointed.

SEC. 12. Convenient time shall be allowed in all cases to make a return, plead, reply, rejoin or demur in all cases of *mandamus* and upon all informations on the return of *quo warranto* in the discretion of the court.

Time to plead.

CHAPTER LXVIII.

AN ACT to regulate marriages.

[APPROVED, FEBRUARY 17, 1833.]

Who may contract marriage.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That male persons of the age of eighteen years, and female persons of the age of fourteen years, may, where they are not prohibited by the laws of God from so doing, be joined in marriage.

Who may solemnize marriages.

SEC. 2. Ministers of the gospel regularly licensed to preach, as long as they continue to be members and preachers of their respective churches, justices of the peace within their respective counties, judges of any of the circuit courts within their respective jurisdictions, and the society of Friends, commonly called Quakers, in their public meetings, according to the rules of their society, are hereby authorized to join together, as husband and wife, all who may apply to them according to the rules hereinafter prescribed.

License.

SEC. 3. Previously to such persons being joined in marriage, they shall produce a license from the clerk of the circuit court of the county where one or both of them shall reside, directed to any person empowered by law to solemnize marriages, authorizing him to join together the persons therein named as husband and wife: *Provided however,* that the society of friends as aforesaid, are hereby authorized to solemnize marriages in their public meetings, without the production of such license, and every clerk shall keep a record of all marriage licenses issued by him, in a book to be used for that purpose.

Proviso.

Consent of parent.

SEC. 4. Male minors under the age of twenty-one years, and female minors under the age of eighteen years shall not be joined in marriage without the consent of their parents or guardians, if such parents or guardians live within the state; and if any clerk of the circuit court shall grant a license to such minor, without the consent of his or her parents or guardians, (if he or she have any such living within this state) either verbally given or in writing, attested by a creditable witness, who shall be a citizen of the county, and shall make oath before such clerk that he heard such parents or guardians give their consent to such marriage, and saw them subscribe their names to such instrument of writing, purporting to be their written consent, he shall for every such offence be subject to pay to such parents or guardians the sum of five hundred dollars, to be recovered by an action of debt, with costs of suit, before any court having jurisdiction thereof, and any indemnifying bond given to any clerk to keep him secure from damages, for granting a marriage license, shall be null and void.

Penalty for issuing license without consent of parents.

License shall not be granted to non-residents.

SEC. 5. No clerk shall grant a marriage license to any person except in the county where the female resides, and has resided for the space of one month immediately preceding such application for license, which residence shall be proven by the affidavit of a disinterested witness resident of the proper coun-

ty. And if any clerk shall grant any marriage license except as above provided, he shall on conviction thereof be fined in any sum not exceeding five hundred dollars, together with costs of suit, to be recovered in any court having jurisdiction thereof, by a presentment or indictment.

SEC. 6. Every person who shall solemnize a marriage by virtue of this act, shall within three months thereafter, file a certificate thereof, in the clerk's office of the county where such marriage took place, to be recorded by such clerk in a book to be kept for that purpose, which record shall be an evidence of such marriage.

SEC. 7. In all cases where the clerk is unacquainted with the parties, or entertains doubts of their lawful age, or whether the female resides in the county, the affidavit of any creditable person residing in the county, subscribed and sworn to before such clerk, which oath he is hereby authorized to administer, setting forth that the person making such affidavit is acquainted with the parties, and that one of them does usually reside in the county, and that he does verily believe they are of lawful age, and that he knows of no lawful reason why they should not be married, shall be a sufficient acquittal to him for granting such license.

SEC. 8. If any person contrary to the provisions of this act, shall knowingly solemnize a marriage, such person shall, on conviction thereof, before the proper circuit court, by presentment or indictment, be rendered incapable of solemnizing marriages thereafter, and moreover be liable to pay the costs of suit. And if any person having solemnized a marriage, shall fail or neglect to file a certificate thereof, as before directed, he shall be subject to pay five dollars for every month he shall continue to fail or neglect to file such certificate, to be collected by presentment or indictment, before any court having jurisdiction thereof, with costs of suit.

SEC. 9. If any person not authorized by the provisions of this act, shall solemnize or attempt to solemnize marriages, he shall on conviction thereof, before the circuit court, be deemed guilty of usurpation and be punished accordingly.

SEC. 10. All marriages heretofore solemnized by licensed preachers of the gospel, and judges of the circuit court, or by any justice of the peace, out of the township for which he was or may be commissioned, provided they were within the county in which the justice resided at the time of solemnization thereof, are hereby declared legal, to all intents and purposes, and the issue or issues thereof are hereby legitimated, as fully and completely as though the said marriages had been from the first instance legal.

CHAPTER LXIX.

AN ACT giving to mechanics a lien upon buildings.

[APPROVED FEBRUARY 17, 1838.]

Mechanics lien
on buildings.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That carpenters, joiners, brick and stone masons, plasterers, turners, painters, brickmakers, lumber merchants, and all others performing labor or furnishing materials for the construction or repair of any building, shall and may have a lien separately or jointly upon the building or buildings they may have constructed or repaired, or for which they may have furnished materials of any description, to the extent of the value of the labor done or materials furnished, or for both, where the amount due shall exceed thirty dollars.

Claim, how en-
forced.

SEC. 2. That any person or persons having a lien under this act, may enforce the same by filing a bill in chancery, in the circuit court of the county where the work was done or materials furnished, at any time, within one year from the completion of the work or furnishing the materials. All the persons having a lien, may join in the bill against the employer; or one or more of them may file a bill against the employer, or one or more of them may file a bill against the employer and the other persons having a lien. Each claim shall be clearly and distinctly stated, and as clear and distinct an answer shall be made to the same. The court on application of either party may direct an issue to be made, and a jury called to try the same, as in other cases at law; and when the claim of each shall be ascertained, the court shall decree the amount against the owner of the building and direct the house and interest of the employer in the lot, to be sold, on a credit of not exceeding six months, the payments to be made in such instalments as the court may direct, taking into consideration the interests of the parties; and the court in making up a decree upon the matters referred, shall award to each claimant, the amount found due to him or them respectively, and the officer collecting the same shall pay over to the persons legally entitled to receive it, all moneys under the same regulations and liabilities as he is required to do under the laws regulating proceedings under execution in civil cases.

Bill may be filed
against employ-
er.Court shall de-
cree amount.Claim shall bear
interest.

SEC. 3. The amount due the claimants, shall bear legal interest from the time the same shall have become due by the contract of the parties, and the purchaser of the property shall pay interest from the time of the sale. The court after all the claimants have been paid shall direct the surplus, if any, to be paid over to the owner of the property; and should the proceeds of the sale be insufficient to pay all the claimants, then the court shall order claimant to be paid in proportion to the amount respectively due to each.

Bond to be filed
by defendant.

SEC. 4. In all proceedings commenced under this act it shall be lawful for the defendant to file a bond with security to

be approved of by the court, conditioned for the payment of the amount which may be found due, in payments, the longest of which shall not exceed six months, as the court may order, and release his property from the lien hereby created.

SEC. 5. That the complainant or complainants in any suit instituted under the provisions of this act, may proceed to the proof of their respective claims, immediately on the service of process; and any defendant or defendants claiming a lien may proceed to the proof of their respective claims, immediately on filing their respective answers, asserting and specifying claims. It shall not be necessary for a defendant or defendants, claiming a lien or relief against any complainant or co-defendant, to make their answers a cross bill against the complainant or any of the co-defendants; but the assertion of any of their respective claims and liens, in their answers, with a prayer for the appropriate or general relief, shall be sufficient to authorize the court to enter the proper decree for relief against any of the complainants or defendants.

Claims how and
when proved.Cross bills need
not be filed.

SEC. 6. That immediately on the service of the process in any suit instituted under the provisions of this act, any defendant or defendants, shall have the right to file with the clerk of the county where suit has been instituted, his or their answer under oath; and the clerk shall endorse thereon the time of filing the same; and ten days shall be allowed the defendant or defendants, to file their answers after the service of process. If process has been served ten days the cause shall stand for trial at the first term of either a common law, or chancery term; if not, then at the first subsequent term, unless the parties agree to go into trial, waiving the insufficiency of the notice. The court may for good cause shewn, permit a continuance, and the defendant or defendants to file his or their answers, at any time before the trial of the cause, on such terms as they may deem equitable.

Answers, how
and when filed.When process
is not served in
time.

SEC. 7. The provisions of this act shall only extend to work done, or materials furnished on new buildings, or to contracts entered into with the owners of any building for repairs, and not to any contract made with the tenant: and any person wishing to avail themselves of the provisions of this act, shall file in the recorder's office of the proper county, within sixty days after the debt becomes due, notice of their intention to hold a lien upon the property for the amount due him or them, specifically setting forth the amount claimed to be due, which the recorder is hereby required to record in his record book, and may charge for the same twenty-five cents for recording it.

Claims, how
made.Shall be record-
ed.

SEC. 8. That any journeyman or laborers who may be employed in the construction or repairing of any building, or in furnishing any materials for the same, may give to the owner or owners of the building or buildings, on which they may have worked, notice in writing, particularly setting forth the amount claimed to be due, and the service rendered, and that their employer is indebted to him or them, and that they hold said owner responsible for the same. The owner of the build-

Journeyman
may claim
against owner.

ing or buildings, is hereby made liable for the amount so claimed, if indebted to the employer to the amount; if not, then to the amount due from him to said employer at the time notice was served, which may be recovered by action of assumpsit as other civil cases, before any court having jurisdiction.

CHAPTER LXX.

AN ACT regulating medical societies.

[APPROVED JANUARY 30, 1830.]

Preamble.

Whereas, owing to defects in the law regulating the practice of physic in this state, the medical societies which now exist, have never been legally organized, and the provisions of the act are such as do not induce a large portion of qualified men to become members of any medical society, or sufficiently to guard against licensing unqualified men to practise medicine; to remedy which evils:

Former proceedings legalized.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the medical society of the state of Indiana, and the several district medical societies which are now organized in this state, shall each, on causing a record of the name of the society, and of the officers last elected, to be made in the recorder's office of the county where the last election was holden, authenticated by the signature of the president and secretary, be thenceforth considered in law and equity, as legally existing; and all licenses heretofore granted by either of them to practise medicine, shall be considered as legally granted, and former elections of officers, as having been legally made; and the division of the state, by the state medical society into twelve medical districts, as having been legally done; and all the powers and privileges of an act, entitled "an act to incorporate medical societies," &c., approved February 12, 1825, are hereby extended to said societies, and to such others as may be formed under the provisions of this act.

Powers.

SEC. 2. The state medical society, shall have power to organize medical societies in those districts where none now exist, by the appointment of a president, secretary and three censors, who shall continue in office till the next annual meeting of said district society, and until their successors are elected. The state society shall designate some suitable place in said districts, for the first annual meeting of said district societies.

Powers of state society of forming district societies.

Annual meeting of state society.

SEC. 3. The state medical society shall meet annually at Indianapolis, on the first Wednesday next succeeding the meeting of the legislature; and at such other times as they may appoint. The several district societies, shall meet annually within their respective districts, on the first Monday in May, and at such other times, as they may appoint; the said district so-

Of dist. society.

cieties may be composed of all persons of good moral character, residing in their respective districts, who have been regularly licensed to practise medicine in this state, or who have been reputable practitioners in the state for two years next preceding the passage of this act, or who have graduated at any medical college in the United States. The state medical society and the several district societies, shall have power to make and enforce any by-laws not inconsistent with the laws of this state, and to impose and collect any fines for non-attendance or other delinquencies of their members, that they may deem expedient and proper. Members.
By-laws.

This act shall take effect and be in force from and after its passage.

CHAPTER LXXI.

AN ACT regulating grist mills and millers.

[APPROVED FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the owner or occupier of every water grist mill, shall be entitled to have and receive, out of the grain which shall be ground in such mill, the following rates of toll, in full compensation therefor, to wit: for grinding and bolting wheat or rye into flour, one-eighth part thereof; for grinding Indian corn, oats, barley or buckwheat, one-eighth part thereof; for grinding malt and chopping rye, one-eighth part thereof. Rates of toll.

SEC. 2. The owner or occupiers of every grist mill shall be accountable to the owners of grain received to grind, for the safe keeping of the same, whilst in such mill; and if any grain, bag, or cask containing the same, shall be lost or destroyed, whilst entrusted to the care of any miller, for the purpose of being ground, the owner or occupier, (as the case may be,) shall make good the same to the owner thereof; but in order to entitle any owner of grain so deposited and lost or destroyed, to recover the value thereof, against the owner or occupier of any such mill, the owner of the grain shall cause the bag or cask containing the same, to be distinctly and durably marked, with the initials of the christian and the whole surname of the owner, in plain letters; but nothing in this section contained shall be so construed, as to charge any owner or occupier of any mill, with any such loss, that shall happen by fire, or other unavoidable accident, without the fault or neglect of such miller, owner or occupier thereof. Accountability to owners for grain, &c.
Owner of grain shall cause the bags &c. to be marked.

SEC. 3. It shall be lawful for the owner or occupier of any grist mill, saw mill, or other water works, and who shall have a dam across any water course, for such owner, as far as the water is caused by said dam, to be backed up said stream, and Where water is backed, owner may erect fortification &c.

where the water has, or is about to wash a channel, so as to turn said stream out of the bed thereof, to erect such fortifications as he may think proper, to prevent the water from cutting or washing a channel, without the banks of such stream, and in so doing not to commit any unnecessary waste or damage: *Provided*, that nothing in this act contained, shall be so construed as to prevent the owner of such bank, from recovering any damages he may sustain, by reason of the erection of such fortifications.

Millers shall grind in turn.
Penalty for exacting more than legal toll.
Miller to receive load and unload.
Mills, &c. exempt from militia duty, &c.
Owners of steam mills, &c. shall post rates of toll.
Penalty for neglect to post rates, and for taking higher rates of toll, &c.
Proviso.

SEC. 4. It shall be the duty of all millers who grind for toll, to well and sufficiently grind the grain brought to their mills, in due time, and in turn as it is brought; and every miller failing to grind as aforesaid, as the same shall come in turn, or who shall take or exact more than legal toll, shall for every such offence, forfeit and pay to the person injured, the sum of two dollars and fifty cents, recoverable by action of debt before any justice of the peace of the township where the offence shall have been committed: *Provided*, the same be sued for within twenty days.

SEC. 5. That it shall be the duty of the owners or occupiers of any grist mill as aforesaid, to receive and carry, in and out of such mills, load and unload all grain brought to their respective mills, when demanded by the owner or carrier of such grain; and on failure thereof, shall be fined three dollars, on the complaint of the owner of the grain, before any justice of the peace of the proper township.

SEC. 6. That the owner or occupier of any such grist mill, in actual operation, shall be exempt from performing militia duty in time of peace, and from serving on juries: *Provided*, this exemption shall only extend to two persons at any one grist mill, such person or persons being the owners or occupiers thereof.

SEC. 7. It shall be the duty of every person who may be the owner of any mill propelled by steam, horse or other animal power, and not by water, to post up in some conspicuous part of his mill-house or mill establishment, the rates of toll he may charge for grinding the different kinds of grain ground at his said mill; and for every day such person shall neglect to keep such rates so posted up he shall forfeit and pay a fine not exceeding three dollars, for the use of the seminary of the proper county; and if the owner of any such mill, shall at any time demand and receive a higher toll than what is contained in the list of rates posted up as aforesaid, he shall forfeit any sum not exceeding three dollars, for every such violation of this act, recoverable in an action of debt by the party injured: *Provided*, that such person shall have a right to change such rates of toll, by posting up such changed rates, two months previous to demanding and receiving the same.

CHAPTER LXXII.

AN ACT to authorize writs of ne exeat.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That writs of ne exeat may hereafter be granted as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy at the time of making application, as in cases where the demand is due; and it shall not be necessary to the granting of such writs of ne exeat, that the applicant should shew that his demand or debt is purely of an equitable character, and cognizable only before a court of equity.

SEC. 2. In case of joint or joint and several obligors or debtors, if one or more of them be about to remove without the jurisdictional limits of this state, taking their property with them, leaving one or more co-obligors or debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived at the time of such intended removal, such co-obligor, or debtor who remains, shall be entitled on application to a writ of ne exeat, to compel the co-obligor or co-debtor who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or join in the conveyance of the land. Also in cases of security, the writ of ne exeat may issue on application of a security against the principal or co-surety, when the obligation or debt shall not yet be due, and the principal or surety is about removing out of the state.

SEC. 3. No writ of ne exeat shall be granted but upon bill or petition (except as is now provided in the law relating to the jurisdiction of justices of the peace) and affidavit to the truth of the allegation therein contained. Upon the granting of any such writ, the court or judge granting the same, shall endorse or cause to be endorsed on the bill or petition, in what penalty, bond or security shall be required of the defendant, and shall also before the issuing said writ, take bond of the complainant, with good and sufficient security, in such sum as the said court or judge shall think proper, conditioned that the said complainant shall prosecute his bill or petition to effect; and that he will reimburse to the defendant such damages and costs as he shall wrongfully sustain by occasion of the said writ. If any such defendant to such writ of ne exeat, and if on trial it shall appear, that such writ of ne exeat was prayed for without just cause, the person aggrieved shall recover damages, to be assessed as in other cases on penal bonds. All writs of ne exeat shall be returnable into the circuit court of the proper county; and when granted by a judge or judges, may be issued by them or the presiding judge, or a direction

may be given for the clerk to do the same, and take a bond as is above required.

Summons to answer petition.

SEC. 4. The writ of *ne exeat* shall contain a summons for the defendant to appear in the circuit court and answer to the said bill or petition, and upon the same being served upon the said defendant, he shall give bond with surety, in the sum endorsed on said writ, conditioned that he will not depart the state without leave of the said court, and that he will render himself in execution to answer any judgment or decree which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases for want of bail. No temporary departure of the defendant from the state, shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order or decree of said court.

B'd by defend't

Surety may surrender principal

SEC. 5. The surety in any bond for the defendant as aforesaid, may at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself, in the same manner that bail may surrender their principal, and obtain the same discharge.

Proceedings on return of writ.

SEC. 6. On the return of the writ of *ne exeat*, if the same shall have been duly served, the court shall proceed thereon as in other cases of chancery, if the matters alleged in said bill be purely of an equitable character, and if the time of the performance of the duty or obligation of the defendant has expired; but the court may nevertheless proceed to determine whether the said writ ought not to be quashed.

CHAPTER LXXIII.

AN ACT concerning free negroes and mulattoes, servants and slaves.

[APPROVED FEBRUARY 10, 1831.]

Negroes & mulattoes migrating into this state, shall give bond, &c.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That from and after the first day of September next, no black or mulatto person coming or brought into this state, shall be permitted to reside therein unless bond with good and sufficient security be given on behalf of such person of color, to be approved of by the overseers of the poor of some township in this state, payable to the state of Indiana, in the penal sum of five hundred dollars, conditioned that such person shall not at any time become a charge to the said county in which said bond shall be given, nor to any other county in this state, as also for such person's good behavior; which bond shall be filed in the clerk's office of the county where the same may be taken. And a conviction of such negro or mulatto, of any crime or misdemeanor against the penal laws of this state,

Bond to be filed.

Conviction of crime, shall forfeit bond.

shall amount to a forfeiture of the condition of such bond: *Provided*, that on any suit brought upon such bond for the penalty thereof, a less sum than the penalty, may, in the discretion of jury trying such action, be assessed against any defendant or defendants, by way of damages.

Proviso as to damages.

SEC. 2. If any negro or mulatto coming into this state as aforesaid, shall fail to comply with the provisions of the first section of this act, it shall be and is hereby made the duty of the overseers of the poor, in any township where such negro or mulatto may be found, to summon him, her or them, to appear before some justice of the peace, to show cause why he, she or they shall not comply with the provisions of this act; which summons shall be issued by a justice of the peace, on the application of any overseer of the poor in this state, and shall be executed by the proper constable. And if such negro or mulatto shall still fail to give the bond and security required by the first section of this act, after being brought before such justice as aforesaid, it shall be the duty of the overseers of the poor of such township, to hire out such negro or mulatto for six months, for the best price in cash that can be had. The proceeds arising from such hiring shall be paid into the county treasury of the proper county, for the use of such negro or mulatto, in such manner as shall be directed by the overseers of the poor aforesaid. *Provided however*, that it shall be lawful for the overseers of the poor, to remove such negro or mulatto, without the jurisdiction of this state, in the same manner and under the same rules and regulations as are pointed out in the act for the relief of the poor, instead of hiring such negro or mulatto out, at the discretion of said overseers.

Negro failing to give bond, how proceeded ag'nt

May be hired out, and proceeds applied to his benefit.

Or be removed under poor law.

SEC. 3. Any sheriff or jailor, who shall hereafter commit or suffer to be committed to prison, any negro or mulatto, without a lawful mittimus, or being otherwise authorized by law for that purpose, or under the provisions of this act, shall be fined, upon presentment or indictment, in any sum not less than one hundred, nor more than five hundred dollars.

Penalty on sheriff or jailor for committing negro, without authority.

SEC. 4. Should any person or persons knowingly engage or hire, or harbor such negro or mulatto hereafter coming or being brought into this state, without such colored person first complying with the provisions of this act, such person or persons so offending, shall pay a fine of not less than five, nor more than one hundred dollars, to be recovered by presentment or indictment.

Penalty for harboring negro who has not given bond.

SEC. 5. That the right of any person or persons to pass through this state, with his, her or their negroes or mulattoes, servant or servants, when emigrating or travelling to any other state or territory, or country, making no unnecessary delay, is hereby declared and secured.

Masters with their slaves may travel through this state.

CHAPTER LXXIV.

AN ACT establishing the office and defining the duties of notary public.

[APPROVED JANUARY 26, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the governor shall appoint and commission, as many notaries public in this state, as he may deem necessary, who shall hold their offices for the term of five years if they shall so long behave well.

SEC. 2. Each notary public, as soon as he shall receive his commission, shall repair to the clerk of the circuit court of his proper county, and shall take the oaths prescribed by the constitution, and by law, and faithfully and impartially to discharge the duties of his office; a certificate of which oaths shall be endorsed on the back of his commission, by said clerk.

SEC. 3. Each notary public shall procure a seal, which shall be called, the seal of the notary public; he shall when required, make all necessary attestations and protestations; for each of which, with his certificate and seal annexed, he shall be entitled to demand and receive of the person applying therefor, the sum of one dollar.

SEC. 4. Each notary public shall and may take and certify the acknowledgment of powers of attorney, mortgages, deeds and other instruments of writing, with or without the release and assignment of dower, as fully in every respect, as any judge or justice may or can now do; for which he shall receive the compensation allowed by law to justices of the peace, for the like service.

SEC. 5. Each notary public shall, and he is hereby authorized to demand and receive for recording, if thereunto required, in a book to be kept for that purpose, seventy-five cents for every attestation, protestation, or other instrument or publication, under his proper seal, relative to foreign bills of exchange, and for recording as aforesaid, relative to inland bills of exchange, twenty-five cents.

SEC. 6. It shall be the duty of the governor, to take bond with sufficient security, from each notary public, before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due performance of the duties thereof; which bond if forfeited, shall be sued for in the name of the state, and for its use.

AN ACT declaratory of the powers of notaries public.

[APPROVED FEBRUARY 2, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That each and every notary public in this state shall be authorized to take and certify all affidavits and deposi-

tions, authorized to be taken and certified by justices of the peace, and to take and certify all proofs of deeds, mortgages, powers of attorney, and all other instruments in writing, authorized to be taken and certified by justices of the peace; and his certificate and attestation, with his official seal, shall be taken and received in all cases, to be of equal verity and validity with the certificate, attestation and seal of a clerk of the circuit court.

SEC. 2. In all cases, where an authentication or certificate of a notary public shall be made for the purpose of being used in any other county than that in which such notary public is resident, the fee of such notary public shall be the same as that allowed to the clerks of the circuit court for similar services.

CHAPTER LXXV.

AN ACT subjecting certain articles to sale for repairs after a certain period.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That hereafter when any person or persons shall leave or deposit or cause to be left or deposited, with any artisan, mechanic or tradesman, any watch, clock, article of jewelry, plate, furniture, clothing or any other article of value, to be altered or repaired and shall fail, neglect or refuse within one year from the time such alteration or repairs are made, to pay the fair and reasonable charges for such repairs and alterations, such citizen, mechanic or tradesman aforesaid may expose such article or articles to public sale for the payment of such charges, ten days notice of such sale to be given in some public newspaper of the proper county if one be published therein, and if not then by written notices in three of the most public places in the proper township; the reasonable expense of such public notices to be paid out of the proceeds of such sale.

SEC. 2. When such article or articles shall be sold as aforesaid, so much of the proceeds of such sale as remains after the payment of the charges for such alterations and repairs, and for the publication and notice as aforesaid shall be deposited in the hands of the treasurer of the proper county by the person or persons making such sale, taking the treasurer's receipt therefor; which said sum shall remain for the period of one year, subject to be drawn for by the person legally entitled thereto, if however one year shall elapse before such person or persons shall make demand therefor of such treasurer, such treasurer shall loan the same out at a rate of interest not less than six per cent. per annum upon good security, the interest thereof to be applied to the use and benefit of the county library of the proper county.

This act to be in force from and after its passage.

Notaries may take affidavits, proofs of deeds, &c. and his seal and certificate to be of equal validity with that of clerks.

Fees.

Persons failing to pay for articles in one year, may be sold, &c.

Balance of sale after paying the claim to be deposited in county treasury.

May be loaned.

CHAPTER LXXV.

[AN ACT to prohibit the circulation of bank notes of a denomination less than five dollars.]

[APPROVED FEBRUARY 2, 1832.]

Prohibition.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That from and after the taking effect of this act, it shall not be lawful for any person or persons, body corporate or politic, to circulate or pass, in payment of any debt, or in the payment of any kind of property, any note or notes, issued by any bank or banking company of any other state or territory, of a denomination less than five dollars.

Penalty.

SEC. 2. That if any person or persons, body corporate or politic, shall pass any note, contrary to the provisions of this act, he, she or they, so offending, shall be liable to an action of debt, for double the amount so passed, to be recovered in the name of the state of Indiana, before any court having jurisdiction thereof, for the use and benefit of the county seminary, of the county wherein such suit is instituted; and it is hereby made the duty of the justices of the peace, constables, trustees of the seminary fund, sheriffs and prosecuting attorneys, of the proper county, on being informed thereof, to cause suit to be commenced.

Officers shall commence suit.

Copies to be forwarded to counties, &c.

SEC. 3. The secretary of state shall cause a sufficient number of copies of this act to be printed, and ten copies to be forwarded to the clerk of the circuit court of each county in this state, as soon as practicable, whose duty it shall be forthwith, to post up one copy in some conspicuous place at the county seat, and forward immediately one copy to each township in his county, to be posted up in some public place in said township; and it shall further be the duty of the secretary of state, to cause this act to be published in the Indiana Democrat and Journal, four weeks in succession, immediately after its passage.

CHAPTER LXXVI.

AN ACT requiring certain public officers to give additional security.

[APPROVED FEBRUARY 2, 1832.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever the security or securities of any of the clerks of the circuit courts, sheriffs, coroners, justices of the peace, school commissioners, county agents, seminary trustees, or any other county or township officers, who have

been heretofore, or who may hereafter be required by law to give bond with security, for the performance of any official duty, shall remove without the state, become insolvent or insufficient; or if such officers, when required by law, have omitted or may hereafter omit, to give bond and security, before entering on the duties of their respective offices, it shall be the duty of the circuit court or board doing county business, upon petition signed by three or more respective citizens of the proper county, setting forth such removal, insolvency or omission to give bond and security, to summon any such officers to appear before the court issuing the same, to show cause, if any they can show, why they shall not give additional bond and security; or where no security has been given, why they have entered upon the duties of their office, without giving security as is required by law.

Citation for failure to give bond, or additional security.

SEC. 2. If upon the hearing of the case, the court shall be of the opinion, that such security or securities have not removed, become insolvent or insufficient, it shall dismiss the same at the cost of the petitioners, but if it shall be the opinion of the court, that such security or securities have removed without the state, become insolvent or are insufficient to discharge the bond, which he or they shall have entered into, as security or securities, or where any such officer has omitted to give security, it shall be the duty of the said court to require such other or further security, as they may deem necessary; and the bond or bonds required by this act, shall be similar in every respect, to the bonds required by any such officer, before entering upon his official duties in the first instance; *Provided however*, that in no case shall the original bond or securities be discharged of affected, where additional bond and security is given under the provisions of this act.

Proceedings to enforce security

SEC. 3. Should any officer refuse to comply with the order or the circuit court, or board doing county business, he shall be subject to attachment and all other process for contempt, for disobeying such order.

AN ACT for the relief of the security of certain officers.

[APPROVED FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That hereafter, any security or securities in the bond given by any justice of the peace, constable, sheriff, coroner, clerk of a circuit court, recorder, school commissioner, township school treasurer, district school treasurer, collector, county treasurer, county surveyor, executor, administrator or guardian, for the performance of any duty or duties, or for the prevention of any omission of any duty or duties required by any law of this state of any such officer, wishing to discharge himself or themselves from any subsequent liability on any such bond, may go before the person or persons, body corporate or court, (or his or their successors) by or before whom such bond had been approved pursuant to law, and make his or their application to be discharged from such liability.

Applicant to be discharged from liability.

Application,
how made.

Summons a-
gainst officer
who gave bond.

Continuance of
cause.

Additional bond
being filed, ap-
plicant exoner-
ated from subse-
quent liability.

Bonds how de-
clared on.

Pleas of exone-
ration.

Operation of.

SEC. 2. On such application being made in writing, stating that such applicant or applicants verily fear and believe that he or they will be made liable on such bond, by reason of such securityship, and be without adequate remedy, verified by the oath or affirmation of such applicant or applicants, which such person or persons, body corporate or court, before whom such application is made, or any justice of the peace, is hereby authorized and empowered to administer, such person or persons, body corporate or court, before whom such application is made, shall forthwith issue a summons directed to the sheriff or coroner, or any constable of the county in which the officer who gave such bond resides, requiring such officer to appear before such person or persons, body corporate or court issuing such summons, at any time within six days thereafter, and execute a further bond as required by law for the performance of the condition of the former bond, with such additional security as may be approved by the power issuing such summons. And the person before whom the said cause is tried, may in his discretion, continue the cause such length of time as to him may seem reasonable upon proper cause.*

SEC. 4. On the execution of such additional bond with security as aforesaid, such applicant or applicants shall be exonerated from any subsequent liability accruing on the bond by him or them executed as aforesaid.

SEC. 5. In declaring on any bond, one or more obligors of which may have been exonerated therefrom as aforesaid, it shall be sufficient to declare only against such obligor or obligors as were not exonerated as aforesaid, by alleging the exonerated of such other obligor or obligors; or all the obligors may be declared against, in which latter case, such exonerated obligor or obligors, may plead such their exonerated in bar.

SEC. 6. On such plea being sustained or established on demurrer or otherwise, it shall not operate as a discharge of any obligor or obligors not included in such plea in such suit, but judgment shall be given as though the defendant or defendants pleading such plea, had not been joined in such suit.

AN ACT to amend an act entitled "an act for the relief of the securities of certain officers, approved Feb. 1, 1834.

[APPROVED FEBRUARY 7, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That where an executor, administrator or guardian, in any bond mentioned in the first section of the act to which this is an amendment, and in all cases where any court or board doing county business shall have approved any bond mentioned in said section, the application to be discharged from subsequent liability in that section mentioned, may in the vacation of such court or board, be made before the clerk of such court or board, who shall in such case have the

*NOTE.—Third section is repealed, also, part of the second section. See the 6th section of the act which follows.

same powers, and be subject to the same duties and regulations, in relation to such application, and in receiving and approving the additional bond and security, and to any other matter pertaining to the premises, as such court or board would possess, or be subject to if such application had been made to such court or board.

SEC. 2. If the expiration of the time mentioned in the summons issued by the clerk on such application shall happen during a subsequent session of the court or board which approved such bond, and if the additional bond and security is not given and approved before the commencement of such session, such court or board only, shall have the power to approve and receive such bond and security if given within the time required; and if the expiration of the time mentioned in the summons issued by any court or board shall happen in a vacation thereof, and if the additional bond and security is not given and approved before the close of the session during which such court or board issued said summons, the clerk of such court or board is empowered to approve and receive such additional bond and security.

SEC. 3. Every such application, summons and additional bond, (if any be given and approved) which is required by the act to which this is an amendment shall be filed in the same depository with the original bond; and office copies of the same or either of them shall be *prima facie* evidence without the production of the originals.

SEC. 4. The summons required by this act, and the act to which this is an amendment shall on its face require the principal in the bond, within three days after service on him made, to appear before the person or persons, body corporate, court or board or clerk (as the case may be) whose duty it is to receive and approve such additional bond with security, and give and execute the same with additional security, conditioned as such former bond.

SEC. 5. Should such principal fail or refuse to appear and enter into such additional bond with security approved as aforesaid, or to resign or otherwise vacate his office or trust, (as the case may be) within the time limited in the summons, unless prevented by an absolute inability (other than an inability to procure such additional security) he shall on conviction thereof on indictment, be fined in any sum not exceeding fifty dollars, and ten dollars for each week after the expiration of such limited time, during which he shall so fail or refuse, and be imprisoned in the county jail for any length of time not exceeding three months.

SEC. 6. The third section and so much of the second section of the act to which this is an amendment as provides that such summons shall require the principal to appear within six days after issuing the same, to execute a further bond; and so much of said second section as gives the person before whom the cause therein mentioned is tried, power to try or continue the same, are hereby repealed.

CHAPTER LXXVII.

AN ACT to provide for the partition of real estate.

[APPROVED, FEBRUARY 1, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when two or more persons are proprietors of

Circuit c. shall appoint commissioners, and notice of application how given.

Oath of com'rs.

Their duty.

Return and its requisites.

Return to be recorded, and its effect.

Vacancy of commissioners, how filled.

Where the estate cannot be divided, court shall order sale.

Terms of sale.

any real estate, any of whom are desirous of having the same divided, it shall and may be lawful for the circuit court of the county where such real estate may be situate, on the application of any such person, (notice of such application having been previously given by the party so applying for, at least four weeks in some public newspaper in this state,) to appoint three disinterested freeholders, residents of said county, not related to either of the parties, as commissioners for dividing the said estate; and said commissioners having previously taken an oath or affirmation, before some justice of the peace in said county, honestly and faithfully to execute the trust reposed in them as commissioners aforesaid, shall proceed to make division of said estate, as directed by the court, among the owners and proprietors thereof, according to their respective rights; which partition being made by the said commissioners, or any two of them, and return thereof being made by the said commissioners, in writing under their hands to said court, particularly describing the lots or portions allowed to each respective owner or proprietor, mentioning which of the owners or proprietors are minors, if any such there be, which return being acknowledged by the commissioners making the same, before any one of the judges of the court aforesaid for the said county, and accepted by the court, and entered and recorded in the clerk's office, shall be a partition of such lands, lots and tenements therein mentioned. And in case of the death, resignation, removal or refusal to act of any commissioner, in any stage of the proceedings, the court shall in their discretion fill such vacancy; and such commissioner shall proceed to consummate such proceeding according to the intent and meaning of this act, and all acts done by such commissioners shall be deemed and taken as valid as though the same had been done and performed by the predecessor or predecessors of such commissioners.

SEC. 2. That whenever any real estate held by sundry owners, is so circumstanced that a division cannot be had, without prejudice to some of the owners thereof, and the commissioners appointed to make partition of the same, shall report to the court that the same is not susceptible of an equitable partition, to the advantage of the proprietors thereof, or of any of them, the said court shall thereupon make an order for the sale of the whole or such part of the said land as may be by said commissioners reported as incapable of an equitable and just partition, under such terms, and upon such conditions, and subject to such restrictions, as the said court in its discretion shall order and direct, and if any partition of any

part of said land, may be made to any portion or number of the proprietors thereof, the same shall remain valid if confirmed by said court, free and discharged from all claim and interest whatsoever of the residue of said proprietors; and such proprietors as may have their part or portion of such land set apart to them as aforesaid, shall release of record in the said court, all right, claim, and interest whatsoever, in the residue and undivided portion of said land, and the proceeds thereof, to the residue of such proprietors; and such commissioners shall make good and sufficient deeds to the purchasers of such estate under the direction of the court, which shall operate as an effectual bar, both in law and in equity, against such owners or proprietors, and all persons claiming under them; and the moneys arising therefrom, to pay to the persons entitled thereto under the direction of the court.

Mutual releases.

Deed to purchaser and effect.

SEC. 3. The commissioners so appointed, shall be entitled to receive each one dollar per day, for their services rendered as aforesaid, together with such other sum, as the court may deem reasonable, for surveying, marking, chain carrying, platting and conveyancing, and judgment for the same and all costs shall be rendered against such owners in favor of the commissioners, on their motion, or of the officers concerned.

Compensation to commis's &c.

SEC. 4. The guardians of all minors shall be and are hereby respectively authorized and empowered, on behalf of the respective minors, whose guardians they are, to do and perform any matter or thing respecting the division of any lands, tenements or hereditaments, as hereinafter directed, which shall be binding on such minors and be deemed as valid to every intent and purpose, as if the same had been done by such minors, after they had arrived at full age.

Act of guardians as to partition binding.

SEC. 5. No division or sale shall be made by order of the said court as above directed, contrary to the intention of any testator, as expressed in his last will and testament.

Division not to be made contrary to a devise.

SEC. 6. When two or more persons are the joint owners of any real estate, lying in more than one county, the circuit court of either county in which such estate may be, shall have jurisdiction to make partition of the whole of such estate, in the same manner as if the same were situate in but one county.

Partition how made where estate is in several counties.

SEC. 7. In all cases of partition of decedent's estates agreeably to this act, it shall be the duty of said commissioners, if thereunto required by the widow, to assign and set over to her, her dower of and in the lands and tenements of the deceased, agreeably to an act for assignment of dower, and prescribing the mode of proceeding therein, and shall make due return of their proceedings, as directed by the first section of this act.

Dower may be assigned by com'rs, if widow request.

SEC. 8. When the heirs of any person dying intestate, shall be entitled by inheritance from such person, to any lands and tenements, and one or more of such heirs shall have been advanced in the life time of such person, by a portion or settlement in lands or otherwise, the said commissioners in making partition shall take into consideration the value of such portion at the time of its being advanced, and also the distribution shares of each heir in the personal estate of the deceased; and

In partition among heirs, the commissioners shall consider advancement to any heir.

by their said division shall make the estate of all the heirs to be equal as near as can be estimated, according to their respective rights.

Review of partition may be granted.

Review in favor of non-resident.

Concurrent jurisdiction of law and equity, in partition.

SEC. 9. Upon return of any partition made as aforesaid, the court to which the same is returned, may for good cause shewn appoint new commissioners to review such partition, who shall in all respects be governed by the provisions of this act; and any person not a resident of the proper county, may within one year after such return, obtain a review as aforesaid; and any infant whose guardian shall not attend and approve such partition, any feme covert or lunatic, may within one year after the removal of his or her disability, have a review, upon shewing cause as aforesaid.

SEC. 10. That the courts of equity, may and shall have concurrent jurisdiction, with courts of law, in all cases of partition, with the usual powers of courts of equity, to whom jurisdiction in partition is given.

CHAPTER LXXVIII.

AN ACT relative to limited partnerships.

[APPROVED FEBRUARY 17, 1838.]

Limited partnerships provided for.

Special partners and their liability.

Special partners names not used in business.

Mode of establishing.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That hereafter it shall and may be lawful to form limited partnerships, for the transaction of business, within this state, according to the provisions of this act.

SEC. 2. That partnerships, to be constituted under this act, shall consist of one or more partners, jointly and severally responsible, according to the existing law and rules of law upon that subject, who shall be called general partners, and of one or more partners, who shall furnish certain funds or capital to the common stock, according to the provisions of the articles of partnership, and whose liability shall extend no further than to the fund or capital so furnished, and who shall be called special partners.

SEC. 3. That such partnerships shall be conducted under the name or firm, to be composed of the names of one or more of all parties interested, excepting special partners, whose names shall not be used, under the penalty of being liable as general partners.

SEC. 4. That no special partner shall transact any business on account of the partnership, nor be employed as agent, attorney in fact or otherwise, under the penalty of being liable as a general partner: *Provided,* that this section shall not be construed to prevent the special partner from examining into the state and progress of the partnership concern, and advising as to its management, nor of acting as the attorney-at-law of said partnership.

SEC. 5. That before any partnership under this act shall be carried into effect, the name and firm under which the same is to be conducted, the names of the partners, both special and general, distinguishing them accordingly, and the places of their residence, shall be registered in a book to be kept for that purpose, and at all times open to public inspection in the office of the clerk of the circuit court of the county in which the principal business of the partnership is carried on; and if the partnership shall at any time have places of business situated in different counties, the names of the partners and the title of the firm, shall be registered in like manner in every such county, before the commencement of business therein.

SEC. 6. That the said registry shall also designate those of the general partners, who are authorized to transact, manage and sign for the partnership, and for which alone the partnership shall be responsible; and also the amount of the capital furnished by every special partner, the periods at which the partnership is to commence and terminate, and all revivals, continuances, and alterations made prior to the original proposed termination of the partnership, shall be registered as aforesaid.

SEC. 7. That it shall be the duty of one or more of the general partners, authorized by the partnership to manage their concerns, at the time of registering as aforesaid, to file an affidavit of the actual advance of such capital as by the special partner or partners at the commencement of the partnership, and according to the articles of partnership, was to be advanced, and of the execution of the obligation or obligations of such special partner or partners, for the payment of such sum or sums as are to be advanced at any time after the commencement of such partnership. And if any person shall be guilty of false swearing in the premises, he shall be deemed to have committed perjury, and shall be punished accordingly.

SEC. 8. That it shall not be lawful for any such partnership, nor any member thereof, in contemplation of bankruptcy or insolvency, and with the intent or for the purpose of paying or securing any one or more of their or his creditors, in preference to any other of their or his creditors, to make any sale conveyance, gift, transfer or assignment of their or his property or effects, or to confess any judgment or to create any lien whatsoever upon their or his property or effects, and every such conveyance, gift, transfer or assignment, and every such judgment or other lien, shall be and the same is hereby declared to be utterly void.

SEC. 9. That the general partners in every such partnership, shall be liable to account to the special partners, and to each other for the management of the joint concern, according to the law of partnership as now subsisting.

SEC. 10. That at such times as the partners in any partnership may determine, but not more than once in each and every year from and after the commencement of the same, the special partners may draw from the partnership funds, such

Publishing special partnership.

Registry of partnership.

Affidavit of capital.

Conveyances and transfers made void in certain cases.

Dividing profits.

sum or sums of money, as by the partners or a majority of them may be agreed upon for a dividend upon the stock of the special partner or partners: *Provided*, that no such dividend shall be drawn by any special partner or partners, under any pretence whatever, until the general partner or partners, or some of them who are authorized to transact the business of said partnership, shall make and file an affidavit in the office of the clerk, in which registry is made, that the clear profits of the partnership since their commencement or last dividend, over and above all losses sustained, and bad debts made during the same time, exceed the amount of the dividend or dividends declared: *And provided*, that unless, as above provided, no part of the capital stock of any partnership shall be withdrawn, by any special partner, and that in case of bankruptcy or insolvency of the partnership, no special partner shall be considered or allowed to claim as a creditor under any circumstance.

Suits prosecuted and defended in name of general partners only.

SEC. 11. That suits to be brought by partnerships formed under this act, whether at law or in equity, shall be in the names of the general partners, and suits against such partnerships, shall be against the general partners only, except where special partners have become liable as general partners, in which case they may be made as such, defendants in such suit.

Terms published in newspaper.

SEC. 12. That it shall be the duty of the general partners to publish the terms of their partnership or any change therein as registered, in some newspaper, to be designated by the clerk with whom the registry is made, for three months next ensuing such registry.

SEC. 13. For performing the duties required of him by this act, the clerk shall be entitled to demand and have one dollar for each registry.

CHAPTER LXXIX.

AN ACT for the relief of the poor.

[APPROVED FEBRUARY 17, 1838.]

Oath of overseers of poor.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That each overseer of the poor, elected or appointed according to law, shall, before he enters on the duties of his office, take an oath or affirmation, that he will discharge his duties faithfully and impartially.

Body corporate and politic.

SEC. 2. The overseers of the poor for the several townships, shall forever hereafter be in name and in fact, and they are hereby declared to be, bodies politic and corporate in law, to all intents and purposes; and shall have perpetual succession; and by the name and style of "the overseers of the poor" of their respective townships, may sue and be sued, plead and

be impleaded, in all courts of judicature; and by such name ^{Style or corporate powers.} may purchase, take, or receive any lands, tenements, or hereditaments, goods, chattels, sum or sums of money, to and for the use of the poor of their respective townships, of the gift, alienation or devise of any person or persons whomsoever; to hold to them, the said overseers and their successors in office, in trust, for the use of the poor forever.

SEC. 3. It shall be the duty of the overseers of the poor, ^{Poor, how farmed out.} in such counties as have in them no common poor house established by law, two weeks next preceding the first Monday in May in each year to give public notice by having published in the newspaper or newspapers of their respective county, or by posting upon the court house door, and in other public places in said county an advertisement certifying the poor to be provided for and asking for sealed proposals for their maintenance, during said year; which sealed proposals so many as received shall be opened and acted on by said overseers on said day: *Provided*, nothing herein contained, shall prohibit any overseers of the poor from receiving and accepting propositions at any time, for the keeping of such persons, and others, who may in the interim, become a county charge: *Provided moreover*, that the boards doing county business may, in their discretion, allow and pay to poor persons, who may become chargeable as paupers, and who are of mature years and sound mind, and who from their general character will probably be ^{Transient poor how provided for.} benefitted thereby, such annual allowance as will be equal to the charge of their maintenance, by employing the lowest bidder to keep them, the said board taking the usual amount of charges in like cases, as the rule, for making such allowance: *Provided also*, that the overseers of the poor shall, in all cases practicable, bind out as apprentices any such paupers under the age of twenty-one years, if a male; or if a female, under the age of eighteen years.

SEC. 4. The overseers of the poor shall make a return to ^{Overseers of poor shall make return to clerk.} the clerk of the board doing county business, of the sum or sums of money for which the poor of their respective townships, were provided for, within fifteen days after every such contract shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board doing county business, in the same manner as other claims of the county are paid.

SEC. 5. It shall be the duty of the said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint, and if in their judgment, the poor have not been sufficiently provided with the common necessities of life, or have in any respect been ill-treated, by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such persons keeping them, as such overseers may deem reasonable and proper.

SEC. 6. It shall be the duty of said overseers of the poor ^{On complaint, overseers how to proceed.} to put out as apprentices, all poor children whose parents are dead, or whose parents shall be found by the said overseers ^{Poor children to be put out as apprentices.}

Indentures to be recorded.

Suit may be brought on indenture.

Poor book, how kept.

Compensation.

Board doing county business may appoint some person to take charge of the poor.

unable to maintain them; males until they arrive at the age of twenty-one, and females until the age of eighteen years; and moreover at the same time, it shall be their duty to execute indentures of such apprenticeship, a duplicate of which such overseers shall deposit with the recorder of the county, whose duty it shall be to enter the same of record in a book, to be kept for that purpose; for which service he shall receive a fee of fifty cents, to be paid out of the county treasury; and for every failure so to record the same, when thereunto required, such recorder shall be subject to pay a fine, not exceeding one hundred dollars, upon indictment before the circuit court of the county; and a copy of such indentures, certified by such recorder, shall be evidence of the contract therein set forth, in all courts of justice within this state; and it is hereby made the duty of the prosecuting attorney of the proper circuit, upon the application of any minor so bound as an apprentice, or upon the application of any other person in his or her behalf, to institute and prosecute to final judgment and execution, an action against the master of such minor, for the breach of any stipulation or condition in favor of such minor in said indenture contained.

SEC. 7. The said overseers of the poor shall enter in the poor book of their respective townships, all poor persons in their respective townships, who are unable to take care of themselves, and who shall in their judgment, be entitled to the benefit of this act; together with the date or time of the entry of such person.

SEC. 8. The overseers of the poor in each township in the state, shall be entitled to receive each one dollar per day for each and every day they shall be necessarily employed in discharge of their several duties, to be allowed by the boards doing county business, on being satisfied of such service having been performed.

SEC. 9. It shall be lawful for the boards doing county business in the different counties of this state, whenever they may deem it advisable and proper to do so, to employ some humane and responsible person or persons, resident in their respective counties, upon such terms and under such restrictions as they shall consider most advantageous for the interest of the county, whose duty it shall be to receive into his or their care or custody, all persons who may have become a county charge as paupers; and it shall be the duty of the person or persons thus employed, immediately thereupon to take such measures for the employment and support of such paupers, as said board shall from time to time, establish, order and direct, consistently with the law of the land; and as soon as the person or persons thus employed are prepared for the reception of the poor aforesaid, they shall from time to time, as they may become chargeable as paupers in the respective townships in said counties, be removed and delivered into his or their care and custody, who shall receive the same, and do and perform all the duties which may be deemed requisite and proper to be done and performed by said board.

SEC. 10. The person or persons so employed, as such director or directors by said board, are hereby required to give bond with freehold security, to said board in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty; and he or they shall make in writing to such board, a detailed report at their sessions in May and November annually, of the time and manner of the admission of each pauper, their health and fitness to labor, the results of their industry, and the expenses incurred; and it shall be the duty of the members of such board in person, annually to inspect said place of refuge, with regard to its fitness in all respects for the objects of its establishment.

SEC. 11. Whenever it shall be necessary and practicable, poor children of the asylums who cannot be bound out, or whom it may not be expedient to bind out as apprentices, shall be educated thereat, or otherwise, at the charge of the proper asylum as far as the means thereof, not necessary to be applied, may extend.

SEC. 12. It shall be the duty of the directors, or the person acting as such director, of any asylum erected or established by law, to superintend and direct the education of such poor children, according to the eleventh section of this act; and for the purpose of carrying the foregoing into effect, with the least possible expense, it shall be the duty of such officer to appoint some most suitable pauper as a teacher, when proper and expedient.

SEC. 13. If any person appointed overseer of the poor of any township, and in the county of Knox, any justice of the peace, shall neglect or refuse to take upon himself the said office, he shall forfeit six dollars to and for the poor of such township, at the suit of the board doing county business of the proper county.

SEC. 14. In all cases where medical aid for the poor may be required, the overseers shall procure such physicians to attend them as the sick shall prefer; and in case no preference is signified, the said overseers shall employ the best physician in the county; or if he cannot be procured, the next best.

SEC. 15. If any overseer shall remove out of his proper township, he shall previous to his removal, deliver over to some other overseer of the township from which he shall be so removing, all books, papers and other things concerning his office; and upon the death of any such overseer, his executors or administrators shall, within forty days after his decease, deliver over all things belonging to his office, to some other overseer.

SEC. 16. Any person who shall have been a resident of any county one whole year, next preceding his or her pauperism shall be deemed to have legal settlement in said county as a poor person, within the provisions of this act.

SEC. 17. Every married woman during her coverture, and after her husband's death, shall be deemed to be legally settled, in the place where he was last settled.

Paupers, how removed.

SEC. 18. Upon any complaint made by the overseer of the poor of the proper county, to any justice of the peace of said county wherein such township is situate, it shall be the duty of any one justice of the peace of said county, where any person, not a citizen of such township according to the provisions of this act, is or are likely to become chargeable to said county, where he, she or they shall have come to inhabit, by his warrant or order, directed to said overseer, to remove and convey such person or persons to the county, township or state where he, she or they shall have come to inhabit, by his warrant or order, directed to said overseers, to remove and convey such person or persons to the county, township or state, where he, she or they was or were last legally settled, unless such person shall give sufficient security, to discharge and indemnify the said county or place, to which he, she or they is or are likely to become chargeable.

Bond of indemnity.

Transient poor how provided for.

SEC. 19. That hereafter, should any one within the description of poor persons named in this act, be found in any county or township, and the overseers of such township, be unable to ascertain and establish the last place of legal settlement of such person, the said overseers shall proceed to provide for such person in the same manner that other poor persons are hereby directed to be provided for.

How paupers may have the benefit of this law.

SEC. 20. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the township in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the board doing county business may if they should think proper, direct the said overseers to receive him or her upon their poor list.

Appeal from order of removal.

SEC. 21. If any person shall think himself or herself aggrieved by the order of removal made by any of the said justices, such person may appeal to the next circuit court to be held for the county from whence such person shall have been removed, which said court shall determine the same, and if there be any defects of form in such order, the said court shall cause the same to be certified and determined, without any costs to the party, and after such amendment, shall proceed to hear the truth and merits of the case. But no such order of removal shall be proceeded on, unless reasonable notice be given by the overseers of the township appealing to the overseers of the township from which the removal shall be, the reasonableness of which notice shall be determined by the court to which the appeal is made; and if it shall appear to the said court, that reasonable notice was not given, then said appeal shall be postponed until the next term of said court, at which time it shall be determined.

Notice of appeal

Poor removed, how received.

SEC. 22. If any person be removed by virtue of this law, from one county, township or place, to any other place within this state, by warrant or order, under the hand and seal of any justice of the peace as aforesaid, the overseers of the poor of

the township or place to which the said person shall be removed, are hereby required to receive such person.

SEC. 23. Whereas, it sometimes happens, that men separate themselves without reasonable cause from their wives and desert their children, and women also desert their children, leaving them a public charge, although such person may have estates which would contribute to the maintenance of such wives or children, the overseers of the poor, of such township or place, having first obtained an order or warrant from one justice of the peace of the county or place where such wife or children shall be so left or neglected, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as said justice shall order and direct, as a provision for such wife's maintenance, or for the support of such child or children, as the case may be; which warrant or order being confirmed at the next circuit court of the county, such court shall make an order to the overseers to dispose of such goods and chattels, by sale or otherwise, or so much thereof for the purposes aforesaid, as said circuit court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by said court, of his or her lands or tenements; and if no estate, real or personal, of such husband, father or mother can be found, with which provision can be made as aforesaid, said court shall order the payment of such sums as they shall think reasonable, for the maintenance of any wife or children so neglected, and shall commit such husband, father or mother, to the common jail, there to remain until he or she shall comply with said order, give security for the performance thereof, or be otherwise discharged by said court; and on complaint being made to any justice of the peace in any county, of any wife or children being neglected and left unprovided for, such justice shall take security from the husband, father or mother neglecting as aforesaid, for his or her appearance at the next term of the circuit court of the county, there to abide the determination of said court; and for want of such security, to commit such person to jail.

Persons abandoning their families how proceeded against.

Goods may be seized.

Husband may be committed to jail.

Security for maintenance, when to be taken.

SEC. 24. If any person shall find himself or herself aggrieved by any justice of the peace, in pursuance of this act, such person may appeal to the next circuit court for the county where sentence was given, except in cases of removal, and cases of poor persons becoming chargeable in one place, who are legally settled in another, as is otherwise provided by this act; whose decision in all such cases, shall be conclusive.

Appeal.

SEC. 25. Every poor person who shall have cause of action against any person, or who shall be defendant in any suit, shall have by the discretion of the court before whom such poor person would sue, or may be sued, (as the case may be) the benefit of process of all and every description, according to the nature of his cause of action or defence, free of charge; and such court shall direct the clerk and all other officers thereof to govern themselves accordingly, and shall assign to such poor person, counsel learned in the law, and appoint all other officers

Paupers may prosecute suit.

Counsel shall be assigned.

necessary to be had for the prosecution of such suit or defence, who shall severally perform the same without fee or reward therefor; and if any counsel or officer or other person so assigned and directed to serve aforesaid, shall exact and receive any fee or reward for any such service, either directly or indirectly, he shall forfeit and pay the sum of five hundred dollars, to the use of the party aggrieved, to be recovered by action of debt with costs of suit.

Affidavit to authorize person to prosecute as a pauper.

SEC. 26. On application of any poor person to the courts or judges thereof, for any writ or writs, or other process, as hereinbefore provided for, it shall be the duty of such poor person, previously, to make affidavit before some person authorized by law to administer oaths, that such poor person is not worth in property, clear of all just debts, ten dollars; and that he or she does not consider himself or herself able, either by industry or otherwise, to procure a sufficiency of money to carry on or defend said suit or suits, mentioning the suit or action, and that injustice as he believes, is likely to be done by him, for want of money or other necessary means sufficient to carry on said suit or action; which affidavit shall be duly subscribed by such poor person, attested by the person administering and taking the same, and shall be lodged by him with the court or judge, to whom the application is made. No defendant gaining any suit or action, brought against him by any such poor person, shall be held responsible for, or bound to pay any costs that may have accrued in defending such suit or action; but if such poor person shall obtain a judgment, he shall recover full costs, and the officers concerned shall receive their fees accordingly.

Costs of suit by pauper.

Annual settlement.

SEC. 27. The board doing county business of the several counties, are hereby directed to settle with the overseers of the poor in the several townships of their respective counties, at least once in every year, and oftener if they should deem the same necessary, and also to make to such overseers a reasonable compensation for their services.

Temporary aid of transient poor.

SEC. 28. It shall be the duty of the overseers of the poor, on complaint made to them, that any person not citizens of their respective townships, are lying sick therein, or in distress without friends or money, so that they are likely to suffer, to examine into the case of such persons, and grant such temporary relief as the nature of the case may require; and if any person shall die within any township, who shall not leave money or other means necessary to defray his funeral expenses, it shall be the duty of the overseers of the poor of such township to employ some person to provide for, and superintend the burial of such decedent, and the necessary and reasonable expenses of such funeral shall be paid by and upon the order of said overseers; and the board doing county business of the proper county at their next meeting shall examine such claim, and if found reasonable, shall give an order on the county treasurer for the amount thereof.

Poor tax may be levied.

SEC. 29. The board doing county business in the several counties of this state may, if they deem it expedient, annually

at their session in May, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed by law to be raised; the tax hereby authorized to be laid, shall be collected by the same officers or persons whose duty it may be to collect the state and county revenue, who shall pay the same accordingly into the county treasury.

SEC. 30. The overseers of the poor of the several townships, shall annually, at their May session of the board doing county business of their respective counties present their accounts and make report generally of their proceedings for the past year, to the said board; and when said board shall audit and allow any claim or account presented by such overseers of the poor, they shall draw on the county treasurer therefor, whose duty it shall be, to pay the same out of any moneys in the county treasury not otherwise appropriated.

Annual report from overseers of the poor.

SEC. 31. That the board doing county business in the several counties, whenever they may deem the same advisable, shall purchase and hold a tract of land in the name of their respective counties, and erect such buildings thereon for the support and accommodation of the poor of the said counties, as they may deem expedient and proper; and in order that the same may be effected, such board shall have power for that purpose, to assess on property liable to be assessed for raising a county revenue, not exceeding one fourth in addition to the rates at which such property may be assessed by the existing laws.

Asylum shall be provided.

SEC. 32. That so soon as the necessary provisions may be made, by the erection of suitable buildings, the said boards shall direct and order that all persons who have become a permanent charge as paupers on their counties, shall be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable.

Poor shall be removed to asylum.

SEC. 33. That in order to aid in the employment and support of the poor aforesaid at such asylum, said boards are authorized to appoint one or more directors of such institution, under such regulations as such boards may establish.

Directors of asylum.

SEC. 34. That whenever such establishment may be arranged and prepared for the reception of the poor aforesaid, the said overseers of the poor, shall from time to time, as persons may become permanent charges to their respective townships as paupers, have such persons removed to the said asylums; and the directors of such asylum shall have all the powers by this act granted to the overseers of the poor, so far as the same may be necessary and expedient; and shall also in like manner present their accounts and make report of their proceedings, and do and perform all other duties, so far as the same may be deemed requisite, as are herein prescribed and directed to be done by the overseers of the poor.

Poor shall from time to time be placed in asylum.

SEC. 35. If any action shall be brought against any overseer of the poor, or other person, who in his aid and by his command, shall do any thing concerning his office, he may

plead the general issue, and give this act and every special matter in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become non-suit, he shall pay the costs. Nothing in this act shall be construed to affect any rights accruing or which have accrued to any county under any former law.

Proceedings when parents or guardians object to binding minor

SEC. 36. That nothing in this act contained shall be so construed as to authorize any overseer of the poor to bind out as apprentices, minors whose parents or guardians shall reside in the county, and object thereto, until the said parents shall be summoned to appear before the next probate court of the county, to shew cause why said minor should not be bound out, and if no sufficient cause to the contrary be shown, the said court shall order said overseers to bind out such minors according to the provisions of this act.

SEC. 37. This act to take effect and be in force from and after its publication.

CHAPTER LXXX.

AN ACT regulating the practice in chancery.

[APPROVED FEBRUARY 10, 1831.]

Bills may be filed in vacation.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That original bills may be filed in vacation or in term time, and that thereupon process may forthwith issue under the seal of the court, returnable to the first day of the next term of the court.

Process may be issued to another co. when one defendant resides in county where issued.

SEC. 2. When one or more of the defendants resides in or flies to another county, the process may be directed to such county, and there executed by the proper officer, but no decree shall be entered against such defendant or defendants, unless a cause of action shall be made out against some defendant who resided in the county at the time of filing the bill. But in all cases where the cause of action is local, or where it shall appear by affidavit that the defendant has removed from the county, after the filing of the bill, the process may issue from that to any other county, and be served by the proper officer, and decree be thereupon had according to the rules of the court, as in any other cases. And when process is returned not executed at the return day thereof, the clerk may issue an *alias*, *pluries* or other process, without an order of court; and all cases where the cause of action is local, and the subject matter thereof is situate in several counties, the complainant shall have his election in which of the several counties he will commence his suit, and the court of chancery of such county, shall have jurisdiction thereof.

Where issued, when cause of action is local, &c.

Alias, pluries, &c.

Election where to proceed.

Publication vs. non-resident.

SEC. 3. Whenever it shall appear by affidavit filed, or the officer's return, that any defendant is not found, or is not a re-

sident of this state, the court may grant an order for publication, to notify the defendant of the pendency of the bill, for three weeks successively, in some public newspaper of general circulation.

SEC. 4. The sheriff or other officer shall endorse on the process the time it was received and executed, subject to the same regulations and penalties, as are prescribed in the act regulating the practice in suits at law.

SEC. 5. The complainant may make as many defendants to his bill as he may think proper, although they may claim under different titles; but if the bill be dismissed as to any one of the defendants, or a decree entered in his favor, he shall be entitled to his costs, unless the court for special reasons shall otherwise decree.

SEC. 6. The complainant may amend his bill at any time before answer, or in an immaterial part after answer, without the payment of costs; but if he amends in a material part, after answer, he shall pay the costs occasioned by the amendment. And the defendant may amend his answer before or after replication, subject to the same rules; but after appearance, process executed or publication, the amended bill shall not require new process or publication.

SEC. 7. When the process has been executed thirty days, or publication made sixty days before the term, the defendant shall plead or answer, on or before the first day of the term, and shall not thereafter file any special demurer or dilatory plea; and if he fails to plead, answer or demur, on the calling of the cause, the bill may be taken as confessed against him. If he pleads, answers or demurs, the complainant shall reply, and the defendant rejoined, and so on if necessary, until the issues in law or in fact are made up; and if either party fails to complete the issue on his part, the court for such failure may enter up a decree against him, or in their discretion, give further time for the completion of the issue.

SEC. 8. All answers shall be upon oath or affirmation, and if the answer denies the material allegations in the bill, the complainant shall not have a decree, unless the bill is proved by two witnesses, or by one witness and corroborating circumstances.

SEC. 9. That the defendant may introduce any new matter in his answer, or file interrogatories and call upon the complainant to answer on oath or affirmation; which the complainant shall do, under the same regulations that are imposed on the defendant in answering the bill, except that he may either answer immediately, or demand a continuance, and have until the first day of the next term to answer.

SEC. 10. The defendant may by his answer introduce a new party, and call upon him to answer any allegations or interrogatories he may set forth, whereupon process may issue, and such other proceedings be had, as if such matter had been exhibited by bill.

SEC. 11. Exceptions to an answer may be taken at any

time before replication, and shall stand for hearing at the term when they are taken.

Issues how made and when tried.
Jury trial.
 Sec. 12. The issue may be made up by bill and answer, where a special replication is unnecessary; and when depositions are to be taken, the cause shall stand for hearing, at the term next after the issue is completed. When an issue is to be tried by a jury, the court may appoint the time of the trial, as soon as the circumstances will admit of it; and issues in law shall stand for trial as soon as they are made up.

Time given by court to answer over.
 Sec. 13. After the trial of an issue, or the overruling of a demurrer in a case where by the chancery practice the defendant has a right to answer, or where an answer has been adjudged insufficient, the court may appoint a time, in which the defendant shall answer; and if he fails to answer in that time, they may proceed against him, as for failure in the first instance.

Attachments for failing to answer.
 Sec. 14. Attachments for failing to answer, may be issued by the court, returnable at such time as they may appoint.

Pleadings may be lodged with clerk in vacation.
 Sec. 15. Either party may lodge his answer or other pleading with the clerk in vacation, but they shall not be considered as filed, until entered on the order book in open court: the clerk shall endorse on them the time they are filed in court, but need not copy them on the order book.

Depositions, when taken.
 Sec. 16. The complainant may take depositions in thirty days after the subpoena has been executed, or publication made; and the defendant may take depositions as soon as his answer is filed; each giving the opposite party reasonable notice of the time and place they are to be taken.

When cause may be dismissed or continued.
 Sec. 17. If at any time the complainant fails to prosecute, and the defendant fails to appear, the court may dismiss the bill or continue the cause, at their discretion.

Non-resident def't may open decree, &c.
Infant, &c. may open decree &c.
 Sec. 18. Whenever a decree is entered up against an absent non-resident defendant, he shall be permitted to open the decree, at any time within one year, by appearing and answering the complainant's bill, and paying the costs subsequent to the time of answering, and if such defendant is an infant, *feme covert*, *non compos mentis*, or without the United States on public business, he or she shall be allowed one year after such disability is removed, in which to open such decree.

Bills of review, and revivor. &c. Continuances.
 Sec. 19. Bills of review and revivor, and supplemental bills, may be filed according to the usage of courts of chancery; and continuances granted for good cause, at any stage of the proceeding, on payment of costs.

Injunctions by whom awarded, & in what cases.
Attachments to enforce orders of court.
 Sec. 20. The court in term time, or president judge, or the two associate judges, in the presence of each other in vacation shall have full power and authority, to grant injunctions to stay all proceedings on judgments at law, to suspend proceedings on suits that are pending, to stay waste, and to exercise all powers that are usual for courts of chancery to exercise in granting restraining orders and injunctions, and to issue all other process necessary to carry into effect the provisions of this section, by attachment or otherwise, according to the exigency of the case,

and agreeably to the usages of courts in chancery; and their jurisdiction shall extend to judgments rendered by justices of the peace, and matters that are made cognizable before them. And the power and authority hereby given, may be exercised by the two associate judges, to operate in their own county, and by the president judges, to operate in any county in the circuit over which they preside.

Injunctions on judgments at law.
Release.
Bond.
Notice.
Injunctions in other cases.
 Sec. 21. Injunctions shall not be awarded to stay proceedings on judgments at law, but upon bill filed, and supported by oath or affirmation, and a release of all errors in the judgment at law, prayed to be enjoined, under the hand and seal of the party asking the same, endorsed and signed on the bill; nor for a greater sum than the complainant shall shew he is not equitably bound to pay; nor unless the complainant shall give bond with security, to be approved of by the court, judge or judges, in a sufficient sum to secure the payment of the judgment so enjoined, with ten per centum damages thereon, in case of dissolution, and all costs; nor unless they shall be satisfied of the complainant's equity; nor unless the opposite party has had ten days notice of the time and place of application, unless the application is made in open court, when no notice shall be required. And in all other cases where they shall be called on to exercise any of the powers above given, the party making the application shall file his bill, supported by oath or affirmation, and give bond and security, to be approved of by the court, judge or judges, who shall fix the penalty, conditioned to pay all damages and costs, to the party enjoined or restrained, that may accrue, and they being satisfied of the equity of the application and notice as above having been given, unless in cases of emergency.

Subpoena to issue with injunction.
 Sec. 22. Whenever an injunction is awarded, the clerk shall issue a subpoena with the injunction, which shall enjoin all parties, attorneys, and officers, from proceeding on the judgment so enjoined; and all proceedings on said judgment, and any execution thereon shall be immediately stayed; and every officer in the state, shall immediately desist from any further proceedings thereon; and if the sheriff or other officer, shall have taken any money or property on said judgment, he shall restore the same to the person from whom it was taken, and return such execution enjoined.

Motion to dissolve injunction.
 Sec. 23. Motions to dissolve injunctions on the bill for want of equity, may be made without notice, but motions to dissolve on bill and answer, or on bill, answer and exhibits, shall not be made, until the party has had ten days' notice of such motion. On the dissolution of any injunction, the court shall decree in favor of the defendant, ten per centum on the judgment at law.

Ne exeat, requires to being issued, &c.
Bond.
 Sec. 24. The court in term time, or the circuit judge, or the two associates in the presence of each other, in vacation, may grant writs of *ne exeat*; but not until the bill is filed and supported by oath or affirmation, nor until the party applying for the same, shall give bond in the clerk's office in such

sum and with such security, as the court, judge or judges granting the same may direct, conditioned for the payment of all damages the defendant may sustain, if it shall appear that said writ was obtained without a just cause. And if the party so stayed, shall think himself aggrieved thereby, he may bring suit on said bond; and if it shall appear that the writ was unjustly obtained, he shall recover the damages he has thereby sustained.

Suit on ne exeat bond.

Penalty of ne exeat bond.

SEC. 25. The court, judge or judges granting said writ, shall endorse thereon, in what penalty bond with security shall be required of the defendant, and if the defendant shall go out of the state, and return before his appearance in court is required, or before it is necessary for him to perform any order of the court, such departure shall not be considered a breach of the condition of said bond.

Breach.

SEC. 26. If the defendant shall by answer or otherwise, satisfy the court, that there is no reason for his being restrained, or give sufficient security to perform the decree of the court, the writ may be discharged.

Ne exeat writ may be discharged.

SEC. 27. All notices required by this act, shall be given to the party, his agent or attorney at law, if either of them reside in this state, and may be served by the sheriff or other officer of the proper county; but if neither the party, his agent or attorney resides in, or shall both be absent from the state, the notice may be filed in the clerk's office where the suit is depending, or published three weeks successively in some public newspaper.

Notices to whom given.

SEC. 28. Costs shall be taxed in favor of the successful party, except the court for special reasons shall otherwise decree; and executions may issue into any county in this state, to carry decrees into effect, in the same manner, and to operate in the same way, as on judgment at law.

Costs, execution &c.

SEC. 29. It shall not hereafter ever be necessary to make up a feigned issue, but in all cases where questions arise, which according to the practice, usage and discretion of courts of chancery, ought to be referred to a jury for trial, the court shall direct a comprehensive entry and note of the matter in issue so to be tried, to be made, upon which the court may order a jury empanelled and sworn to try the same, and the verdict of such jury shall be taken for the information of the court.

Feigned issues abolished, and facts tried by jury, &c.

SEC. 30. Whenever it is necessary to revive a suit in chancery, in which the answer of the defendant may have been filed, who shall die after it is filed and before a decree is rendered, on application for that purpose, an order may be made for reviving the suit in the name of the legal representatives of the deceased, without a bill of revivor. But where such order is made against the representatives of the defendant, a copy thereof shall be served on the person or persons so made defendants, by order of revival, if they reside within this state, and where the defendant or defendants so made, are not inhabitants of this state, or cannot be found within the reach of the process of the court, the said order of revival shall be publish-

Revivor vs. representatives of a decedent where answer has been filed.

ed in some public newspaper, as in other cases of absent defendants.

SEC. 31. In all cases where the complainant or complainants shall know the names of some of the heirs who shall be made defendants, or whom it shall be necessary to make defendants to any suit, and shall not know the name of others, or shall not know whether there are others or not, it shall be lawful for him, her, or them, to proceed by subpoena against those whose names are known and resident in the state, and by publication against those whose names are unknown, or who are non-residents of the state.

Proceedings vs. known and unknown heirs.

SEC. 32. Whenever a decree shall be rendered vesting the legal title of any real estate, which may be in controversy, in any person or persons, body politic or corporate, or when a decree shall be made to vest the legal title of any person or persons who are or may be laboring under legal disability to convey, the court may appoint a commissioner to convey the same by deed, during the term at which the said decree may be rendered, or at the next term, as the court in their discretion may order and direct, to the person or persons, body politic or corporate that may be entitled to the same, which deed so made, acknowledged before and approved of by the court, shall vest the legal title of such real estate in the grantee or grantees, to all intents and purposes whatever, and shall be spread upon the order book, and form a part of the record of the suit in which said decree is made.

Com'r to convey real estate, to be appointed.

Effect of conveyance.

SEC. 33. The president judges of the circuit courts in this state, shall have power to appoint as many masters in chancery as such judges may deem expedient, which masters in chancery shall receive their appointment in writing from the judge, and reside in the counties for which they are appointed, and shall hold their appointments until removed by the court. Each and every master in chancery so appointed, shall before he enters on the duties of his office, take an oath before the clerk of the circuit court, well and truly, faithfully and impartially to discharge the duties of master in chancery, which appointment and oath it shall be the duty of the clerk to enter at full length on the order book of the court, after which the said master in chancery so appointed and sworn as aforesaid, shall have full power and authority to take the attestation to all bills and answers in chancery, to which an oath or affirmation is necessary, to take depositions, administer oaths to witnesses, and to strike the balance of accounts that may be in controversy; and exceptions to a master's report may be taken in the circuit court, on or before the first calling of the cause after the report is filed, in such manner as the court by rule shall direct: *Provided however*, nothing in this act shall be so construed, as to prevent justices of the peace, from taking depositions, administering oaths and taking acknowledgements as heretofore.

Masters in chancery to be appointed.

Their oath.

Powers of masters in chancery.

Exceptions to master's report.

SEC. 34. Every deposition intended to be read in any suit at law or in chancery, in any court or in any suit, or before a justice of the peace, shall be filed in such court, at least one day before such suit is ready for trial, or any time previous to

Depositions, when to be filed in cir. court and before j. p.

Objections to deposition when to be taken.

Proviso.

the trial, before the justice; and such deposition shall be published by order of the court, on the motion of either party, at any time after the same is so filed; and no objection to the admissibility of such deposition, either in whole or in part, as evidence in such cause, shall be valid, unless the same be made before entering into the trial of such cause: *Provided*, that any such objection, the cause of which arises after such trial or hearing is gone into, shall be valid: *And provided also*, that if the incompetency of the deponent as a witness, appear at any stage of the proceedings, it shall avoid his evidence.

AN ACT to amend an act entitled an act regulating the practice in chancery, approved February 10, 1831.

[APPROVED JANUARY 31, 1835.]

On petition for divorce publication shall be made by the clerk in vacation on affidavit of non-residence of defendant.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever it shall be made satisfactorily to appear, by the affidavit of some disinterested person, filed during the vacation of the court, in the clerk's office of the proper county, that any defendant or defendants to any bill in chancery, or to any petition or libel for divorce, filed in the clerk's office aforesaid, is not a resident of this state, it shall be the duty of the clerk aforesaid, forthwith to make publication for three successive weeks, in some public newspaper printed weekly in the county where the said bill, petition, or libel may be filed; and if there be no such newspaper printed in said county, then in the nearest weekly newspaper printed in some other county, setting forth the filing of such affidavit, and notifying said defendant or defendants of such bill, libel, or petition, and that unless such defendant or defendants plead, answer, or demur to the same, on or before the calling of the cause at the next ensuing term of said court, the bill, as to such defendant or defendants, will be taken as confessed.

Proceedings where publication has been made sixty days prior to the term of the court.

SEC. 2. If such publication shall have been made at least sixty days before the first day of the next following term of the circuit court of such county, such further proceedings shall take place, as is contemplated in the seventh and other sections of the act to which this is an amendment, according to the requirements of justice and equity.

Complainant may dismiss bill without prejudice after a reversal of decree by s. c.

SEC. 3. That in any suit in chancery, which may have been or may be hereafter, taken to the supreme court, by appeal or writ of error, and the decree of the circuit court reversed, in whole or in part, and remanded to the circuit court with instructions, the complainant in the bill may, at the term of the circuit court to which the opinion of the supreme court may be certified, dismiss his bill, without prejudice to his legal or equitable rights, notwithstanding such instructions, the complainant paying all costs.

Suit in chancery may be prosecuted against unknown heirs.

SEC. 4. Where a ground for a suit in chancery shall exist against a defendant who shall die before or pending such suit, or if such ground for a suit shall arise after such death, and it shall not be known whether such decedent has any one or more

heirs or not, or that if there are such heir or heirs, that they are non-residents of this state, and it may be necessary to make such heir or heirs (if any) defendants to such suit, such suit may be prosecuted as against the unknown heirs of such decedent, and publication of such suit may be made accordingly.

AN ACT supplemental to an act entitled "an act regulating the practice in chancery," approved February 10, 1831.

[APPROVED FEBRUARY 6, 1836.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That masters in chancery, in addition to the powers now vested in them, are hereby authorized to administer oaths and affirmations generally; to take acknowledgements to all instruments of writing when necessary; to take depositions; to issue subpoenas for witnesses, which shall be served and returned by the sheriff or any constable of the proper county, or any other person specially deputed for that purpose, by said master in chancery. And if witnesses fail to appear, he may compel their attendance by attachment, to be served and returned as aforesaid; and may punish for contempts, in the same way and manner that justices of the peace are, or may hereafter be authorized to do. And said masters in chancery shall be allowed for their services the same fees which are or may hereafter be allowed to other officers for similar services, or shall be assessed by the court and taxed in the bill of costs.

CHAPTER LXXXI.

AN ACT regulating the practice in suits at law.

[APPROVED JANUARY 29, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever hereafter any writ shall be executed, and the declaration filed in any case, ten days before the first day of the term of any circuit court, the said case shall stand for trial at that term, whether the writ issued previous to or after the filing of the declaration in such case.

SEC. 2. All process (except subpoenas) shall be sealed by the clerk with the seal of the court, and made returnable to the first day of the next term.

SEC. 3. The process against a corporation, shall be a summons, which being executed on the president, presiding officer or a majority of the members, the proceedings shall be the same, in other respects as against natural persons.

SEC. 4. Bail shall be required, in all actions of debt and case, founded on any writing, for the payment of money, and

in actions of covenant; and in all actions where an affidavit shall be made by the plaintiff or any person on his behalf, and filed in the clerk's office, of an existing debt, then due from the defendant to plaintiff. And the sum specified in such writing or in such affidavit, shall be endorsed by the clerk on the writ; and in all other actions whenever it shall appear to any judge of the circuit court, by an affidavit filed in the clerk's office, that bail should be required of the defendant, he shall endorse on the writ an order to that effect; and affidavits to hold to bail, made in any of the states of the Union, or territories thereof, and authenticated in the same manner as is required by the laws of this state, for the admission of records and judicial proceedings of other states, shall be sufficient authority for the clerk or judge to endorse on the writ an order for special bail.

Amount of bail to be endorsed.

Affidavit to hold to bail.

Affidavit made in another state.

Recognizance of special bail.

SEC. 5. When process requiring bail is executed, no appearance bail bond shall be taken, but the officer executing the same, shall take a recognizance of special bail, of some freeholder resident in the state, on the back of the process, in substance as follows: "I, A B do hereby acknowledge myself special bail for the within named C D, in the suit named in the within writ. Witness my hand and seal this day of A B." Which shall have all the force and effect of a regular recognizance of special bail, and shall be in all respects obligatory as such.

Exceptions to sufficiency of bail.

SEC. 6. If the plaintiff shall deem the bail insufficient, he may at the term to which the writ is returned, or at the next term thereafter, (if final judgment shall not be given) object to the sufficiency of the bail, by giving three days notice of the objection, to the officer to whom the writ was directed, and the court shall hear and determine, as to the sufficiency of the bail as heretofore. If the notice is adjudged insufficient, the court may allow the plaintiff during the same or until the next term, to give notice, and make his objections, if final judgment, in the mean time, shall not be given.

Bail not discharged, if adjudged insufficient, but officer shall be liable.

SEC. 7. If the bail is adjudged insufficient, and other bail approved by the court is not given, the bail shall not thereby be discharged, but if the plaintiff shall proceed to judgment against the bail, and the demand cannot be obtained, the officer shall be liable for the amount of his demand, and all costs of suit, which may be recovered in an action against the officer or his securities, or all or either of them.

Time of executing process to be endorsed.

SEC. 8. When the sheriff executes any writ or process of any description, he shall insert in his return, the time it was executed, and also endorse on all process, except subpoenas and venires, the time such process came to his hands.

Alias, pluries, & other process.

SEC. 9. When the process shall be returned not executed, on the return day thereof, the clerk may issue an *alias, pluries* or other process, without an order of the court, or if the process should be returned "executed" as to one or more of the defendants, and "not found," as to others, it shall be lawful for the plaintiff to suggest such return upon the record, and proceed to final judgment and execution against the defendants, upon whom the process was executed, and may at any time

Suggestion of not found as to some, and judgment at vs. others.

thereafter proceed against those "not found;" but it shall not be lawful for any officer to return "not found" as to any defendant, unless he shall have been one at least, to his usual place of residence, if he have any.

SEC. 10. When one or more of the defendants reside in any other county in the state, the process may issue to such county, and be executed by the sheriff of that county, and returned to the office from whence it issued. But no judgment shall be given against such defendant, unless the process shall have been executed on some resident defendant of the county where the suit was commenced.

SEC. 11. If the defendant reside in the county where the suit is instituted, and shall afterwards flee or remove therefrom, the plaintiff on filing an affidavit of the fact, may have process directed to any other county, and if it is returned executed, he may proceed as in other cases.

SEC. 12. All actions of debt on simple contract, and for rent arrear, actions on the case (other than for slander,) actions of account, trespass, trespass *quare clausum freget*, detinue and replevin for goods and chattels, shall be commenced within five years after the cause of action accrued, and not after. All actions of trespass for assault and battery, and for wounding and imprisonment, shall be commenced within three years after the cause of action accrued, and not after. All actions upon any act of assembly, now or hereafter to be made, when the right of action is limited to the party aggrieved, shall be commenced within two years after the cause of action accrued, and not after, except when the right of action is limited by the act to a shorter period; and all actions of slander shall be commenced within one year after the cause of action accrued, and not after, saving however the right of infants, femes covert, persons non-compos mentis, or without the jurisdiction of the United States, until one year after their several disabilities are removed: *Provided however*, that no statute of limitation shall ever be pleaded as a bar, or operate as such, to any action founded on an instrument or contract in writing, whether the same be sealed or unsealed, nor to running accounts between merchant and merchant: *And provided also*, that if any person or persons against whom there is or shall be any of the causes of action specified in this section, be or shall be at the time of any such cause of action given or accrued, without the jurisdiction of the United States, that then such person or persons who is or shall be entitled to such action, shall be at liberty to bring said actions against said person or persons, within one year after their return from without the United States: *And provided further*, that nothing in this act shall be so construed as in any manner to restrict or limit any defendant or defendants to any action in pleading, set-off or payment thereto, to the amount of the plaintiff's cause of action: *And provided also*, that if in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and for matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his writ, plaint or bill; that in all such cases,

Process to another county.

Process when def't removes after suit.

Limitation.

Proviso as to actions founded on writing and mercantile accounts.

Proviso as to def'ts without the U. States.

Proviso as to judgments reversed, &c.

and in cases discontinued for want of a court at any regular term, the plaintiff, his heirs, executors, or administrators, as the case may require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or such discontinuance, and not after: *Provided further*, that on all contracts made in this state, if the defendant shall be without the same when the cause of action accrued, said action shall not be barred until the times above limited shall have expired, after the defendant shall have come within the jurisdiction thereof, and on all contracts made without this state, if the defendant shall have left the state or territory where the same was made, and come within the jurisdiction of this state, before cause of action accrued thereon, the plaintiff shall not be barred his right of action, until the time above limited, after the said demand shall have been brought within the jurisdiction of this state.

Provision as to
def'ts removing
from other
states, &c.

Bond for costs.

SEC. 13. No suit shall be commenced by a non-resident, until he shall file in the clerk's office a bond with security, to be approved of by the clerk, for the payment of all costs that may accrue in consequence thereof, either to the opposite party or to the officers of the court; but the suit shall not be dismissed for the want of such bond, if the plaintiff or his agent shall file the same in open court, on the calling of the cause, which bond when executed, shall have a retrospective effect, and include all previous costs; and such bond for costs may be put in suit by any of the aforesaid persons, for the sums to which they may be respectively entitled.

Suit on bond for
costs.

Affidavit for se-
curity for costs.

Writs in suits
on bonds to the
state &c. how
endorsed

SEC. 14. When suit is brought on any bond given by any executor or administrator, or any state, county or township officer, to and in the name of the state of Indiana, the governor, the associate or other judges, sheriff or other civil officer, for the performance of any duty or trust, it shall be the duty of the person for whose benefit the same was instituted, to indorse on the writ or other process, for whose benefit the same was issued; and if he fails to succeed in the suit, he shall be liable for all costs that accrue thereon.

Docket of suits,
when to be
made and how
kept.

SEC. 15. The clerk, within three weeks after the adjournment of the court, shall make out his docket for the succeeding term, wherein he shall docket all suits then in court, and whenever afterwards a writ is issued, he shall enter the suit on his docket; he shall set as many causes for each day, as in his opinion will be disposed of by the court, always docketing the actions of debt for the second day, and the chancery cases at the end of the common law suits, to no particular day, which may be taken up at any time in the discretion of the court.

Clerk's offices to
be examined
annually.

SEC. 16. It shall be the duty of the president of each circuit, once in every year, to examine each clerk's office in his circuit, and report to the court in writing, the situation of the books and papers, which report shall be spread upon the order book.

Trials, when
to be had.

SEC. 17. All suits shall stand for trial at the term to which the process shall be returned executed, but if it does not ap-

pear by the officer's return, that the process was executed ten days before the return day thereof, and if the declaration was not filed ten days before such day, the same shall be continued until the next term, unless both parties consent to a trial.

SEC. 18. If the writ issues before the declaration is filed, the plaintiff shall file his declaration, on or before the calling of the cause, or on failure, the suit shall be for that cause dismissed.

SEC. 19. The plaintiff in replevin, and the defendant in all actions, may plead as many several matters in law or fact, as he may deem necessary for his defence.

SEC. 20. Pleas to the jurisdiction of the court, pleas in abatement and special demurrers, shall be filed on or before the day for which the cause was docketed, at the first term at which it stands for trial, and shall not be received at any time afterwards.

SEC. 21. No plea in abatement, plea of non est factum, non-assignment, nor any other plea, replication or other pleadings, denying or requiring proof of the execution or assignment of any bond, bill, release or other instrument of writing, which is the foundation of any suit or defence, and is specially set forth in the declaration, plea or other pleadings shall be received, unless supported by oath or affirmation. When such plea or other pleading denies or requires proof of any assignment, the oath or affidavit shall be, that the party has reason to believe, and does believe that the assignment was not made before the suit was commenced.

SEC. 22. In actions on bonds, or for any penal sum, for the non-performance of covenants or agreements in any indenture, deed or other writing contained, the plaintiff may assign as many breaches as he may think proper, and the jury upon the trial of such action, may assess damages for as many of the breaches as the plaintiff may prove, and the like judgment shall be entered as heretofore in such actions; and if judgment or demurrer, by confession, or nihil dicit, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he may think proper, and the jury shall inquire into the truth of those breaches, and assess the damages the plaintiff has sustained thereby, and execution shall issue, for that sum, and the judgment, shall remain as a security to the plaintiff, his heirs, executors and assigns, for any other breaches that may afterwards happen, and he or they may have a scire facias against the defendant, and assign any other breaches, and thereupon damages shall be assessed and execution issue, as in the first instance. And in actions on penal bonds for the payment of money, if the plaintiff shall recover, the judgment shall be given for the penalty of the bond, to be discharged by the payment of the principal and interest and costs of suit, and execution shall issue accordingly; but if before judgment, the defendant shall bring into court the principal and interest due on such bond, he shall be discharged therefrom, and the judgment shall be given for the costs only.

Defence, all
matters of, may
be pleaded.

Pleas in abate-
ment, when to
be filed.

What pleas
must be sworn
to.

Bonds penal in
action on, sever-
al breaches
may be assigned

Judgment on
penal bond.

Bonds public,
for whose use.

SEC. 23. All bonds or obligations by this or any other law, directed or required to be given, relating to minor's or decedent's estates, and all such bonds as by any law are directed to be given by any judge or other officer or person in office, for the due execution of his or their respective offices or employments, are hereby declared to be to and for the use of, and in trust for the person or persons concerned; and the benefit thereof shall be extended from time to time for the relief and advantage of the party aggrieved, by the mis-feasance, mal-feasance or non-feasance of the officers that did or shall give the same; and such bonds shall not be void on the first recovery, but may be put in suit from time to time, at the instance and for the benefit of the party injured, whenever and as often as justice requires it.

One recovery,
no bar.

Bonds, &c. not
void for want of
form.

SEC. 24. When any recognizance or bond and security are required by law to be given, by any public officer, executor or administrator, or any other person whatsoever, made payable to the state of Indiana, to secure the payment of money or performance of any contract of duty, for the benefit of the state or any individual, such recognizance or bond shall not be void for want of form; and when such bond or recognizance has not the substantial matter required by law, the principal obligor and his securities shall not on that account be discharged, but they shall be equitably bound to the party interested, and such party may by action of debt or scire facias, in any court of competent jurisdiction, suggest that such bond or recognizance is defective, and recover his equitable demand of [from] the principal, and the person or persons who intended to become and were included as securities.

Remedy on defective bond.

SEC. 25. In any action on a bond or single bill, or in debt or scire facias on a judgment, if before action brought, the defendant has paid the principal and interest due by the defeasance or condition, he may plead payment in bar, and in any action to recover the forfeiture annexed to any articles of agreement, covenant, charter, party or other writing obligatory, or for the forfeiture of real estate, by deed of mortgage or bargain and sale with a defeasance, (when such forfeiture, breach or non-performance is found by a jury, by confession, by default, or on demurrer,) the court shall give judgment thereon, for so much as in equity and good conscience is due to the plaintiff.

Judgment, for
what amount to
be given.

SEC. 26. When two or more dealing together are indebted to each other, upon any contract, and one of them commences an action, if the other cannot gainsay or deny the same, he may plead payment of all or part of the debt or demand, and give any contract, account or receipt in evidence, which shall be set forth in such plea; and if it shall appear that the defendant has paid the debt or demand, he shall have judgment for costs; and if it shall be found that part of the sum has been paid, the plaintiff shall have judgment for the residue only: but if it shall appear that the plaintiff's demand is overpaid, the jury shall give their verdict in favor of the defendant for the overplus, and the judgment shall be entered for him for

Plea of payment
in mutual deal-
ings.

Judgment for
plaintiff.

that amount; and whether the judgment is for the plaintiff or the defendant, it shall carry full costs. Judgment for defendant.

SEC. 27. In any action founded upon any speciality or other contract (conveyances of real estate and instruments negotiable by the law merchant excepted,) the defendant, by special plea, may allege the want or failure of the consideration or any part thereof, of such speciality or other contract; and if any speciality or other contract (excepting as aforesaid,) is alleged in any other stage of the proceedings, the other party may aver in answer and prove on trial, the want or failure of the consideration in the whole or part, of such speciality or other contract; and whenever such speciality or other contract shall be given in evidence, without being pleaded, the other party may (excepting as aforesaid) prove the want or failure of the consideration or part thereof, of such speciality or other contract. Consideration, failure of may be pleaded.

SEC. 28. The pleadings may be made up at any time before the calling of the cause, and no rule to declare, plead, &c. shall be necessary; but when the cause is called, if the plea or pleas have not been filed, the defendant shall plead, the plaintiff reply, and the defendant rejoin, and so on till the issues in law or fact be made up, and a trial shall be thereupon had; and if either party shall fail to file his part of the pleadings, the court may enter judgment against him for such failure, unless for good cause shewn, they give him a further day in that or the succeeding term, to file such pleading, on the payment of the costs occasioned by the postponement; and if from any cause, the issue is not made up in the time herein prescribed, or that may be prescribed by the court, the court shall have the same power at each subsequent calling of the cause, to compel the completion of the issues. Pleading, when, to be made up. Judgment for failure to plead, &c. Time to plead.

SEC. 29. The court may give leave to amend the declaration or other pleadings, according to the former usages of courts, at the costs of the party amending; but such amendment shall be filed immediately, unless the court, for good cause, give further day; if the amendment is in matter of form, the trial shall not thereby be delayed, if it be in matter of substance, the other party may immediately answer thereto, whereupon the cause shall proceed, as if no amendment had been made, or he may at his election, demand a continuance of the cause until the next term; if the plaintiff amends his declaration, the defendant may immediately demur thereto for special cause, but if he demands a continuance, he shall not be afterwards permitted to file any special demurrer or dilatory plea, to the amended declaration; the court for good cause shewn may continue the cause at any stage of the proceedings, at the costs of the applicant. Amendment of pleading. Continuance for amendment. Continuance for other cause.

SEC. 30. When the plaintiff might take an interlocutory judgment, but fails to do so, the defendant may file any plea to the merits of the action. And after interlocutory judgment, and before the writ of inquiry is executed, the court may in their discretion, set aside the interlocutory judgment, and give the defendant leave to file a plea to the merits; but in either of Interlocutory judgment. May be set aside.

these cases, the plaintiff may have his right of trial and continuance of the cause.

Non-suit or continuance for laches.

SEC. 31. If on the calling of the cause, the plaintiff fails to prosecute, and the defendant fails to appear, the court may either enter a non-suit against the plaintiff, or continue the cause.

Time of filing, pleading to be endorsed.

SEC. 32. The clerk shall endorse on all pleas and pleadings, the time they were filed, and note the filing in the order book.

Demurrer.

SEC. 33. When a demurrer is joined in any action, the court shall not regard any other defect in the writ, return, declaration or other pleadings, but what shall be specially alleged in the demurrer, as cause thereof, unless something shall be omitted, so essential to the action or defence, that judgment according to law and the right of the case, cannot be given.

No formal exception in ejectment after issue.

SEC. 34. After issue joined in ejectment, on the title only, no exception of form or substance, shall be taken to the declaration.

Charge of adultery &c. actionable.

SEC. 35. Every charge of incest, fornication, adultery, or whoredom, made by any person against any female, shall be actionable, and subject to the same rules and regulations it would be, if the charge were of a criminal nature, the commission of which would subject the offender to death or degrading pains and penalties. And any words falsely spoken of and concerning any person in this state, charging such person with incest, sodomy, buggery, bestiality or the infamous crime against nature, either with mankind or any of the brute creation, shall be in themselves actionable, and no person complaining of the speaking of any such words, shall be held to prove special damages.

Charge of incest, sodomy, &c.

Special damage need not be proved.

Deeds, &c. to be executed with a seal.

SEC. 36. All deeds, bonds, powers of attorney for the conveyance of real estate, shall be executed with a seal, either of wax, wafer or ink, otherwise called a scrawl, and all other instruments of writing, to which by law or the agreement of the parties, a seal is necessary, may be sealed by either of those methods, and each shall have the same effect in law; except where an act of assembly shall require a specific seal to any particular instrument of writing.

When negro, mulatto, &c. may be a witness.

SEC. 37. No negro, mulatto or indian, shall be a witness, except in pleas of the state against negroes, mulattoes or indians, and in civil cases where negroes, mulattoes or indians alone are parties. Every person other than a negro, having one-fourth part or more of negro blood, or any one of whose grandfathers or grandmothers shall have been a negro, shall be deemed a mulatto.

Depositions taken by a J. P. in this state, how authenticated.

Depositions taken by a J. P. of another state, how authenticated.

SEC. 38. Each and every justice of the peace in this state, by virtue of his office, is hereby invested with full power to take depositions, in suits at law and in chancery, without a *dedimus potestatem*, and one justice shall be sufficient for that purpose, whose official certificate shall be a sufficient authentication; and when a *dedimus potestatem* shall issue from any court in this state, directed to any justice of the peace in any other state, authorizing him to take depositions, to be read in evidence in any suit depending in said court, the certificate of

such justice, officially certifying the taking of the same, shall be a sufficient authentication.

SEC. 39. When a witness resides without the state, his deposition may be taken (without previously filing an affidavit in the clerk's office for that purpose) and read in evidence in any suit, and the clerks of the several circuit courts in this state, may issue a *dedimus potestatem* for that purpose, without an affidavit or order of court: and whenever it shall appear by affidavit, that a witness is not a resident of, or is about to leave the state, or is unable by age, sickness, or otherwise to attend the court, or where the claim or defence of any party, or a material part thereof, depends on a single witness, the circuit court in term time, or the clerk in vacation, may issue a commission for taking the deposition of such witness, to be read in evidence on the trial of the cause, in case the witness shall be unable to attend; the party taking the same, giving due notice to the opposite party.

Dedimus may issue without affidavit.

Affidavit when necessary, and deposition de bene esse.

SEC. 40. All notices required by this act, shall be given to the party, his agent or attorney at law, if either of them resides within this state, and may be served by the sheriff or other officer of the proper county; but if neither the party, his agent or attorney resides in the state, the notice may be filed in the clerk's office, where the suit is depending, or published three weeks successively in some public newspaper.

Notices, to whom given.

SEC. 41. In all cases of judgment or demurrer, by *nihil dicit*, or default, where the matter charged in the pleadings, depends upon calculation, or can be reduced to certainty, the court may give judgment for the debt or damages to which the party is entitled, or either party may demand a jury to enquire of such debt or damages; and when the parties in any suit civil or criminal, shall by agreement submit any matter to the determination of the court, they may hear and determine the same without a jury, and give judgment as in other cases.

Judgment by the court without a jury.

SEC. 42. In all actions that may be tried in any court of record, each party shall have the right of peremptory challenge to three jurors.

Challenge to jury.

SEC. 43. The several circuit courts shall have full power and authority, to appoint elisors to serve and execute all manner of writs issuing out of their respective courts, in cases wherein the sheriff and coroner of the proper county are both parties or are interested, and each elisor when so appointed, shall take the same oath, and give like bond before he enters on the duties of his office, that sheriffs have to take and give; and after such elisor shall be sworn, he shall then have the same authority to execute such writ or writs, to the service of which he may be appointed, as the sheriff would have had, and shall be liable to the same penalties, and be governed in all respects by the same rules and restrictions, that sheriffs are bound by in similar cases.

Elisors.

Elisor's oath, bond and duties.

SEC. 44. Interpreters may be sworn to interpret truly, whenever necessary.

Interpreters.

SEC. 45. Every person desirous of suffering a non-suit, shall be barred therefrom, unless it be done before the jury retire from the bar.

Non-suit before jury retire.

Faulty counts to be disregarded.

SEC. 46. When there are several counts one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard such faulty count.

SEC. 47. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

After defective verdict in detinue, writ of inquiry may issue, &c.

SEC. 48. If verdict in detinue omit price or value, the court may at any time award a writ of inquiry to ascertain the same, and if on an issue concerning several things in one count in detinue, no verdict be found for part of them, the verdict shall be good, but the plaintiff shall be barred of his title to the things omitted.

Not more than two new trials and terms of.

SEC. 49. Not more than two new trials shall be granted to the same party, in the same cause: *Provided*, that the supreme and circuit courts, in the granting of new trials, shall grant the same on the payment of costs, or on the costs abiding the event of the suit, as the justice and equity of the case may require, taking into consideration the causes which may make such new trial necessary.

Special bail may surrender principal.

SEC. 50. In all cases against special bail, if the principal shall surrender himself or be surrendered by the bail, before judgment is given against the bail, such suit shall be dismissed at the cost of the bail, and the court shall enter an *exoneretur* on the record, and the bail shall be forever discharged. A bail piece from any sister state, duly authenticated according to the laws of the United States, shall be deemed good authority for special bail to arrest and take his principal without the state; and if the bail do not wish to take their principal without the state, a bail piece, with the county seal annexed, shall be sufficient authority.

Exoneretur.

Bail piece from another state, & its authentication.

Bail piece from another county.

Ca. sa. from another county, how executed.

SEC. 51. That whenever any sheriff in this state shall receive any writ of *capias ad respondendum* from a foreign county, to him directed, it shall be his duty to execute the same, and of his doings thereon, make due return to the court from whence the said writ shall have issued, and also deliver the body of the defendant or defendants to the jail of the county from whence said writ issued, unless such defendant or defendants shall give bail as in other cases.

Leap year.

SEC. 52. That in every leap year the twenty-eighth and twenty-ninth days of February shall be considered in law as one day.

Suits abated by death of plaintiff, how revived.

SEC. 53. Whenever any suit shall abate by the death of the plaintiff, his heirs, executors or administrators may revive the same, by issuing a scire facias against the defendant, and when any suit instituted by any person as executor or administrator, shall abate by the death of the plaintiff, it shall be lawful for the administrator *de bonis non*, to revive the same by issuing a scire facias against the defendant; where the suit abates before the declaration is filed, such representatives may file the same in their representative character, and proceed to judgment, as if the suit had been instituted by them.

SEC. 54. When the defendant dies, the plaintiff may revive the suit by scire facias against his heirs, executors or ad-

ministrators, and when any suit instituted against any person as executor or administrator, shall abate by the death of the defendant, the plaintiff may revive the same, by scire facias against the administrator *de bonis non*, and such representatives may appear and plead in their representative character, as if the suit had been originally against them; if there are no representatives within the jurisdiction of the court, the plaintiff on the return of the scire facias "not found," may take judgment against such heirs, executors or administrators, subject however to be opened at any time within seven years, by either the heirs, executors, administrators, or administrators *de bonis non*, for the purpose of admitting any set off, or equitable defence; but actions of slander and assault and battery shall not be revived.

Suits abated by death of def't, how revived.

Revivor vs. administrator de bonis non.

SEC. 55. That if in any action, there be two or more plaintiffs or defendants, and one or more of them shall die, the action shall not be thereby abated, if the cause of such action survive, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

Death of a co-plaintiff shall not abate suit.

SEC. 56. In all cases hereafter instituted by or against any *feme sole*, in any court of record in this state, if during the pendency of the same, any such plaintiff or defendant shall marry, said action shall not thereby abate, but upon such marriage, with the name of the husband being suggested on the record, such action shall proceed against or in favor of such husband and wife, and be determined in the same manner as if such marriage had taken place before the commencement of such suit.

Feme sole, marriage of, after action, shall not abate suit.

SEC. 57. Whenever any person or persons who have executed or shall hereafter execute, his, her or their bond or obligation, for the conveyance of any real estate, to any person or persons, body politic or corporate, shall die intestate, or without having made the necessary provisions by will for the conveyance of such estate, it shall be lawful for the obligee or obligees in such bonds, or his, her or their assignees, to apply to the circuit court of the county in which such real estate lies, to appoint a commissioner to convey the same, in conformity with the conditions of said obligation, by a deed to be by such commissioner executed, of the same tenor and effect as the deceased obligor was bound to make in his life time: *Provided*, the person or persons making such application as aforesaid, shall first give four weeks personal notice to the heir or heirs of such obligor or obligors, if residents of the state; and if non-residents, three months notice of such application, by advertising the same three weeks successively, in the nearest public newspaper to where the said real estate is situate; and the said commissioner shall on the first day of the term next succeeding such appointment, report his proceedings, accompanied with the original title bond or obligation; which report, bond and conveyance, shall be entered at full length, upon the records of said court, unless objections be made by the legal representa-

Title bond given by deceased obligor how enforced, and proceedings thereon.

Application to court.

Notice.

Report of commissioner.

No conveyance if objected to.

Compensation
to commissioner

Proviso.
Concurrent ju-
risdiction.

Jeofails.

tives of such deceased obligor; in which case the said conveyance shall be inoperative and of no effect, and the obligee or obligees may file his, her or their bill on the chancery side of said court, to perfect his, her or their title. The court shall order a reasonable compensation to such commissioner for his services, to be paid by the applicant: *Provided* the sums so paid, may be recovered at any time thereafter, of the legal representatives of the deceased obligor, if sufficient real or personal estate shall have descended to said representatives, by action of debt or assumpsit brought by said applicant, before any tribunal proper to try the same: *Provided also*, that no applicant shall recover any allowance made as aforesaid, from said representatives, unless the said report, bond and conveyance shall be entered on the records of said court: *Provided*, that circuit courts exercising chancery powers, shall have concurrent jurisdiction of the several matters in this section specified.

SEC. 58. No judgment, after the verdict of twelve men, shall be stayed or reversed for any defect or fault in the writ original or judicial, or for a variance in the writ from the declaration or other proceedings, or for any discontinuance, misjoining of the issue, or lack of warrant of attorney, or for the appearance of either party, being under the age of twenty-one years, by attorney, if the verdict be for him and not to his prejudice, or for not alleging any deed, letters testamentary or letters of administration to be brought into court, or for the omission of the words "with force and arms," "against the peace;" or for the mistake of the given name or surname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleadings, the name, sum, quantity, or time being right in any part of the record or proceedings, or for the omission of the averment, "this he is ready to verify," or "this he is ready to verify by the record," or for not alleging "as appears by the record," or for omitting the averment of any matter, without the proving of which the jury ought not to have given such verdict, or for not alleging that the suit or action is within the jurisdiction of the court, or for any informality in entering up the judgment by the clerk; neither shall any judgment, entered by nihil dicit, or non sum informatus, be reversed, nor judgment after an inquiry of damages be stayed or reversed, for any omission or fault which would not have been good cause to stay or reverse the judgment, if there had been a verdict; and a judgment by confession shall be equal to a release of errors. And for the further prevention of delay, by arresting judgment, and vexatious appeals, the several acts of parliament, commonly called statutes of jeofails, which were in force in England on the seventh day of February, one thousand seven hundred and fifty-two, or so much thereof as relates to jeofails, mispleading and amendment, are hereby declared to be in full force in this state.

Proceedings of
the court, how
drawn up.

SEC. 59. Each day's proceedings of the court shall be drawn up at full length by the clerk, which after being read in

the presence of the court, shall be signed by the president or the two associate judges.

SEC. 60. The clerk shall enter on his execution book, <sup>Execution dock-
et.</sup> every execution at the time it issues, noting in separate columns the names of the parties, the day it issues, the endorsement containing a statement of the debt, damages, interest and costs, and whether replevied or not, the return day, to whom directed, to whom delivered, the officer's return, and the day it is made, at full length, and shall make the like entries on issuing an alias or pluries execution; which book and the entries therein made as aforesaid, shall be taken as matters of record.

SEC. 61. The clerk shall issue subpoenas on the application <sup>Subpoenas how
issued.</sup> of either party, in all cases where the declaration has been filed and a writ issued ten days before the return day; inserting the names of all the witnesses that may be called for at the same time, in one subpoena. And it shall also be the duty of the clerk, upon application as aforesaid, to issue subpoenas for witnesses to any county within this state.

SEC. 62. If either party litigant in any action, shall cause <sup>Not more than
three witnesses
to one fact.</sup> to be subpoenaed more than three witnesses, to prove the same identical fact, the party causing such witness or witnesses over the number of three as aforesaid, to be summoned, shall pay the whole of the costs occasioned by causing to be summoned such surplus number of witnesses as aforesaid.

SEC. 63. That it shall not be necessary for any officer in executing a writ of *scire facias*, to do the same with the aid of two freeholders, but such officer may return such writ in like manner as a summons, whether the defendant or defendants in such writ be found or be not found in such officer's bailiwick. <sup>Scire facias exe-
cuted as a sum-
mons.</sup>

SEC. 64. Whenever a cause is by the supreme court reversed in whole or in part, on appeal or writ of error, and sent <sup>Cause reversed
and remanded,
not to be tried
first term.</sup> back for such further proceedings as may require a trial by a jury, no such trial in such cause shall be had at the first term thereafter, of the court in which such further proceedings are to be had, unless both parties are consenting thereto, but such decision of reversal shall be entered of record in such inferior court, and the cause continued until the following term.

AN ACT to amend an act entitled "an act regulating the practice in suits at law," approved January 29, 1831.

[APPROVED FEBRUARY 4, 1833.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* <sup>The 64th sec. of
the practice act
of '31 limited
in its contract'n.</sup> That the provisions of the sixty-fourth section of the act to which this is an amendment, shall not be construed to extend to any criminal prosecution, nor to any civil cause, in which the decision and opinion (if any) of the supreme court, shall have been deposited in the clerk's office of the circuit court, which rendered the judgment or decree, on which the decision of the supreme court is founded, sixty days before the first day of the ensuing term of said circuit court, subse-

Decree of a foreign court.

Land office certificates evidence of legal title.

Declarations on bills or promissory notes unnecessary.

In appeals parties may amend on payment of costs, &c.

Proviso.

In actions of ejectment, &c. where judgment is for def't, he may take judgment for costs against the lessor &c in lieu of the order and writ of attachm't, as heretofore.

Evidence under the gen. issue in indictments.

quent to the rendering of such decision by the supreme court.

SEC. 2. That hereafter money due by a final decree of a court of equity, without this state, may be recovered in an action of debt.

SEC. 3. That any and every land office certificate of purchase, and any and every land office receipt of final payment, of any lands sold at such land office, shall, before the issuing of a patent thereon, be evidence that the legal title in and to the lands mentioned in the same, is in the legal and bona fide holder thereof, the same being unforfeited and in full force and validity.

SEC. 4. That in all actions at law, for the recovery of a specific sum of money upon bills or promissory notes, it shall not be necessary for the plaintiff in such suit, to file any formal declaration, but the filing of such notes in the clerk's office, shall be a sufficient foundation to such suits, upon which process shall issue, and the defendant or defendants thereto, shall be allowed to plead thereto any defence, which he or they by law, may be entitled to, against the cause of action contained in such promissory notes, as though the same were declared upon; to which the plaintiff shall reply, and the defendant rejoin, until an issue or issues are made up, as in other cases.

SEC. 5. In all actions appealed from the judgment of a justice of the peace, to the circuit court, it shall be lawful for the circuit court to permit the plaintiff to amend his cause of action, without changing the form of action, upon the payment of all costs that may have accrued up to the time of amendment, or by securing the same to be paid, by confessing judgment for the amount, and replevying the same, but no such judgment shall carry a docket fee: *And provided further*, that such amendment shall entitle the defendant to an amendment of his defence, and continuance of such cause, if he requires it; and the defendant in such appeals, may in like manner be entitled to amend his defence under the same terms as is provided for plaintiffs amending their cause of action.

SEC. 6. In all actions of ejectment, and in all actions brought in the name of the state, on the relation of, or for the use of any person or persons, body corporate or politic, and in all actions brought in favor of a nominal plaintiff or plaintiffs, to or for the use or benefit of one or more persons, or of a body politic or corporate (such fact appearing on the record) should a final judgment be rendered therein in favor of such defendant or defendants, in lieu of the order and writ of attachment for costs, heretofore allowed in such cases, in favor of such defendant or defendants; he, she, or they, at his, her or their option may take a judgment for costs against such lessor or lessors, relator or relators, person or persons, for whose use or benefit such action may be brought (as the case may be) and execution may thereon issue as in other cases.

SEC. 7. On the trial of all indictments, a defendant shall be allowed to plead the general issue, and give in evidence any and every matter of defence; and the foreman of grand juries

shall be competent to swear all witnesses, that may come before the grand jury to give evidence.

SEC. 8. That it shall be lawful for the successor or successors in office, of any sheriff or other officer who may have heretofore taken, or who may hereafter take any bond from the plaintiff, in virtue of the fifth section of the act entitled "an act regulating the action of replevin," approved January 20, 1831, to assign such bond to the defendant, if the officer taking the same, shall have died, resigned, been removed, or his term of service expired, without having made such assignment.

SEC. 9. If any executor or administrator has reason to believe, that any demand whatever, exhibited to him for payment, is untrue, or that the same has been paid, or that he will be endangered by making payment thereof without judicial proof, or of being made liable to answer the amount thereof out of his own estate, to the creditors, heirs, or legatees of his testator's or intestate's estate, he may require of the holder or holders of any and all such demands, to file such claim, or a succinct statement thereof, in the probate court of the county, in which the executor or administrator took out letters testamentary or letters of administration, and allege the non-payment or non-performance thereof, and if such executor or administrator will enter his appearance thereto as a defendant and plead to the same, proof of and concerning the matter in question shall be taken by deposition, on reasonable notice of time and place, or *viva voce* before the courts, as the court may direct or the parties agree; and if such executor or administrator demand, and such claimant shall answer on oath, and make discovery of and concerning his claim; and the court upon their hearing of such claim upon the merits concerning the same, shall pass such decree as shall be just, according to equity and the law of the land; and sundry claims of the description above mentioned may be included in one proceeding against such executor or administrator, and sundry decrees passed thereon; and such decrees and orders concerning costs in such proceedings, may be passed by such courts, as are just, according to the usages of courts of equity; and from any final decree, appeal or error, shall lie to the circuit or supreme court as in other cases, and decrees passed upon such proceedings, shall, if had with good faith, and without fraud, be conclusive evidence in favor of any executor or administrator, in any suit brought against him, upon questions respecting the assets of his testation or intestates, arising therein.

SEC. 10. Nothing in an act entitled "an act to organize probate courts, and defining the powers and duties of executors, administrators and guardians," approved February 10, 1831, shall be so construed as to deprive the circuit courts of original jurisdiction, in cases where executors, administrators or guardians are parties, in cases at law and in equity, not expressly vested in some other tribunal. The several probate courts are hereby vested with the same power and jurisdiction, in the partition of estates and assignment of dower, that now belongs to the several circuit courts, to be exercised in the same

Sh'ffs &c. authorized to assign to def't bonds taken by predecessors under the 5th sec. of replevin act of 1831.

Executors &c. may require demands to be proved before probate court.

Manner of such proof.

Duty of court.

Appeal, &c.

Jurisdic't of circuit court in matters of probate.

Jurisdiction of probate court in partition and dower.

Concurrent jurisdiction to probate courts.

way and under the same laws and restrictions that govern the circuit courts; and that concurrent power and jurisdiction is hereby vested in the several probate courts, and to be exercised in the same way, and under the same restrictions, that is confided to the circuit courts, in the fifty-seventh section of the act to which this is an amendment.

Challenge to the array being sustained, another jury may be summoned from among the bystanders.

SEC. 11. Whenever a challenge to the array of a traverse jury, shall be sustained, either by reason of the interest, relationship, or bias of the officer summoning the same or otherwise, an elisor to be appointed by the court, or the coroner (as the case may be) shall, under the direction of the court, summon another jury from among the by-standers, for the trial of the cause in which such challenge was sustained; *Provided*, that if the cause of such challenge come to the knowledge of such court, in any other manner, such court may, in its discretion, order such jury to be summoned as aforesaid.

Proviso.

Collector's certificates to decedents, transferable, &c.

SEC. 12. Collector's certificates of sales of lands for taxes given to a decedent in his lifetime, may be sold and transferred in the same manner, that written contracts made to a decedent in his lifetime, may be sold and transferred, by the twentieth section of the act entitled "an act to organize probate courts, and defining the powers and duties of executors, administrators and guardians," approved February 10, 1831.

Power in courts to adjourn.

SEC. 13. Whenever, from the prevalence of disease at any place, where any court is by law appointed to be held, it shall be deemed dangerous or impracticable to hold such court at the time required by law, it shall be lawful for such court to meet at any time during such time required by law, and adjourn the same to a day not exceeding three months from the time of adjournment, if deemed expedient to hold such court before the next regular term thereof.

Clerk's duty.

SEC. 14. The clerk of said court shall forthwith cause to be published in some newspaper nearest to such court, such order of adjournment, with the time and place of such special session, and post up a similar notice at the court house door, and clerk's office of the county in which such court is held.

Special adjournment, effect of.

SEC. 15. The effect and operation of any such special adjournment, shall, in relation to the duties of all officers, grand jurors, petit jurors, suitors, witnesses, persons recognized, and others, and to the operation of all proceedings, both civil and criminal therein pending, be the same as though the court had adjourned to the court in course; and as to all such duties and operation, the session fixed by such special adjournment, shall be regarded as a regular session.

Suits &c. shall not be discontinued in consequence of the court failing to sit at the regular term.

SEC. 16. Whenever, from the prevalence of disease, sickness, or unavoidable accident, any court shall not be holden at its regular term, from the necessary absence of a judge or judges thereof, no suit or proceeding therein pending, shall for that cause be discontinued, but the duties of parties thereto, their witnesses and all others concerned, shall be the same, as though such suit or proceeding had been regularly continued.

SEC. 17. In all applications for the continuance of any

cause, in any circuit court, for the absence of a material witness, it shall be necessary for the party making the same to state in the affidavit presented to the court for such object, the substance, or principal facts expected to be proved by such absent witness, in order that the court may judge of such materiality.

Affidavit for continuance must state the facts expected to be proven.

AN ACT to amend "an act regulating the practice in suits at law," approved January 29, 1831.

[APPROVED FEBRUARY 3, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That any action of tort, except the action of slander, of malicious prosecution, and of trespass, where the title to real estate is brought in question, commenced in any circuit court, if the plaintiff do not recover five dollars in damages, he shall not recover more costs than damages.

Costs in actions of tort.

SEC. 2. So much of the thirteenth section of the act to which this is an amendment, as relates to resident plaintiffs giving security for costs, shall be, and the same is hereby repealed.

Provision requiring resident plaintiffs to give security for costs, repealed.

SEC. 3. That the plaintiff or plaintiffs in any action at law pending in any court, may file in vacation, or at any time before trial, a dismissal of such action in writing, with the clerk of such court, who shall thereupon enter the same of record in the order book of said court, which shall operate as a non-suit, and corresponding proceedings and judgment shall afterwards be had thereon before such court.

Dismissal in vacation, effect of.

SEC. 4. When the defendant or defendants in such action, his, her, or their agent or attorney, shall become apprised of such dismissal by written notice from the plaintiff or plaintiffs, his, her, or their agent or attorney, or otherwise, such plaintiff or plaintiffs, shall not be liable for any costs afterwards occasioned in such action, by any other person, than such plaintiff or plaintiffs.

Costs.

SEC. 5. After such dismissal is so entered of record, no suit subsequently brought, in whole or in part, for the same cause of action, shall be abated by reason of the institution or pendency of such dismissed action, but the defendant or defendants in such subsequent action (if the same be bailable) may be again held in custody therein until discharged by entering bail; and the parties in such subsequent action, shall be subject and entitled to the same liabilities, regulations, rights and privileges without increase or diminution, as if no such previous action had ever been instituted or pending.

Suit subsequently brought for same cause.

This act to take effect and be in force from and after its passage.

AN ACT supplemental to an act entitled "an act regulating the practice in suits at law," approved January 29, 1831.

[APPROVED FEBRUARY 7, 1835.]

To a plea of payment settling forth matter of set-off, several matters of fact may be replied.

Replication of statute of limitations, to what extent it shall operate.

Pleading may be withdrawn and demurrer put in any time before trial.

Interest &c. shall be allowed on judgments on scire facias for execution on judgments at law.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That to any special plea of payment, setting forth matter of set-off, as provided in the twenty-sixth section of the act to which this is supplemental, the plaintiff or plaintiffs may reply as many several matters in fact as he, she or they may deem necessary: *Provided however*, that a replication of the statute of limitations to any such plea of set-off, shall only operate to prevent a recovery by the defendant or defendants, of any excess of the amount of such plea, over and above what the plaintiff or plaintiffs may be entitled [to] in said action.

SEC. 2. After or before any issue in fact is joined in a suit at law, any one who is party to the same may withdraw any pleading on his part subsequent to the declaration, and file a demurrer to the next previous pleading of his adversary, at any time before trial.

SEC. 3. That in judgments on writs of scire facias for execution on any judgment at law, interest on the sum due, or costs, or both as the case may be, shall be allowed, and included, if the case admit of it.

AN ACT supplemental to an act entitled "an act to regulate the practice in suits at law," approved January 29, 1831.

[APPROVED FEBRUARY 6, 1836.]

Writs &c. may be issued on the Sabbath in certain cases.

Clerks may order bail to be required.

In suits on notes &c. payable at a particular place, demand at the place need not be averred.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That original writs and other processs, may be issued on the first day of the week, commonly called Sunday, by the several clerks of the circuit courts of this state, whenever an affidavit shall be filed by the person suing out the same, setting forth that he is apprehensive of losing his demand unless such writ be issued on said day.

SEC. 2. The clerk of the several circuit courts of this state are hereby authorized to order bail to be required in all those cases and under those restrictions, that the judges of the circuit court are authorized to order the same.

SEC. 3. In all suits based on any note, bill of exchange or other obligation payable at a particular place, it shall not be necessary for the plaintiff to aver in his declaration, or prove on the trial a demand of payment at such place. But it shall be lawful for the defendant in any such suit to aver and show his readiness to pay such demand at the place named where the same became due, and this shall be deemed a valid defence in bar of such suit (permitting the plaintiff however, to avoid such plea, by averring in his replication, and proving at the trial a subsequent demand at the place of payment, and neglect on the part of the defendant to pay such demand.)

SEC. 4. That so much of the forty-second section of an act Repealed. entitled "an act regulating the practice in suits at law, approved January 29, 1831, as authorizes the empannelling of juries *de medietate lingue*, be and the same is hereby repealed.

SEC. 5. That in all actions appealed from the judgment of a justice of the peace to a circuit court, said court may permit the plaintiff to file or add an additional cause or causes of action, without changing the form of action, and said court may also permit the defendant in any such action, to file one or more statements of his defence, where none has been filed, or to file one or more additional statements of defence where one or more statements of defence have been filed, which permission to such plaintiff or defendant, as the case may be, shall be granted, subject to the same terms, rules and restrictions as are provided in the fifth section of an act approved February 4, 1833, entitled, "an act to amend an act entitled 'an act regulating the practice in suits at law,' approved January 29, 1831.

AN ACT to authorize the service of subpoenas by copy.

[APPROVED FEBRUARY 4, 1836.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall hereafter be lawful for any sheriff or other officer in this state to serve any subpoena, which may be directed to him from any circuit or probate court in this state, by leaving a copy of the same at the usual place of residence of the witness or witnesses specified in such subpoenas, in all cases, unless such witness or witnesses have left the county in which they reside, and the time of their return may be uncertain.

SEC. 2. In all cases where a witness is subpoenaed by copy as above specified, it shall be a sufficient tender of his fees, for the party subpoenaing him, or the officer leaving such copy, to leave with said copy the amount of money so to be tendered; and in all prosecutions for contempt, by attachment for failing to obey such subpoena, the witness shall be allowed to purge himself from such alleged contempt, by stating under oath, that such copy or money never came to his knowledge.

CHAPTER LXXXII.

AN ACT for the safe keeping of prisoners, committed under the authority of the United States, into any of the jails of this State, and for other purposes.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the keeper of every jail, in every county within this state, to receive into his custody, all prisoners committed under authority of U. States.

dy any prisoner or prisoners, who may be from time to time committed to his charge, under the authority of the United States, and to safe keep every such prisoner or prisoners, according to the warrant or precept of commitment, until he or they shall be discharged by the due course of the laws of the United States.

Penalty for neglect of duty.

SEC. 2. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for every neglect or failure of duty therein, as he would be subject to by the laws of this state, for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

U. S. to support criminals.

SEC. 3. *Provided always*, That the United States do pay or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner that shall under their authority be committed thereto, during the time such prisoner shall be therein confined, and moreover do support such of the said prisoners as shall be committed for offences.

Jailer to receive prisoners from the marshal of the district.

SEC. 4. That the marshal for the court of the United States within this state, shall have a right to use any county prison within this state, for the imprisonment of any one in his custody by legal writ or process, in the same manner as the sheriff of the respective counties have a right to use such prisoners and all jailers and keepers of jails within this state, are hereby directed to receive and keep such prisoners, delivered them by the marshal or his authorized deputy, in the same manner as if the prisoner were delivered him by the sheriff of the county in which his jail is fixed; *Provided however*, That all charges for keeping and feeding, and other incidents, shall be made by such jailer against the marshal, and not against the county.

Circuit and district court may hold their sessions in supreme court room.

SEC. 5. *And be it further enacted*, That the circuit and district courts of the United States for this state have permission and are hereby authorized to hold their courts in the court room of the supreme court of this state in the capitol, in case the said courts should not be in simultaneous session.

Prisoners convicted may be confined in the state prison.

SEC. 6. That all persons convicted under the laws of the United States, and sentenced to confinement at hard labor or otherwise, by any court within this state, [may be confined within the state] prison of this state; and it shall be the duty of the keeper or superintendant of said prison, to receive into his custody, all such persons sentenced as aforesaid when delivered to him by the proper officer, and to keep them in said prison, according to the terms of their sentence, in the same manner, and subject to the same rules and regulations prescribed for keeping prisoners therein, sentenced under the penal laws of this state, until such convicts shall be discharged by due course of the laws of the United States; the United States being responsible for all expenses attending the same.

SEC. 7. That this act shall be in force from and after its passage.

CHAPTER LXXXIII.

AN ACT regulating prison and prison bounds.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the prison bounds of the several counties in this state shall extend to and be bounded by the limits of their county. Limits of prison bounds co-extensive with the county.

SEC. 2. Every person imprisoned for debt either on mesne process or execution, shall be permitted and allowed the privileges and benefit of the prison bounds; but in no instance to pass over or without said limits; but such prisoner, before he or she shall be entitled to such privileges, shall give bond with security living within the county, to the creditor or creditors, in double the sum for which such prisoner stands committed, conditioned that from and after the execution of such bond, he will continue a true prisoner, in the custody of the jailer or prison keeper, and within the limits of the said prison bounds, without attempting any manner of escape, until discharged by law; and the sheriff shall be liable for the solvency of the bail; but for the breach of the condition of said bonds, the sheriff shall not be liable; but shall, when demanded by the creditor mentioned in the bond, deliver the same over to such creditor or creditors, who may commence suit thereon; against the obligors of the same. Who entitled to prison bounds. Sheriff liable for solvency of bail conditions thereof.

SEC. 3. If any action or suit shall be brought or instituted against any sheriff or jailer, for any manner of escape, committed by any person allowed the benefits and privileges of prison bounds, having first given bond, as is by this law required, such sheriff or jailer shall have the liberty of pleading the general issue and of giving this act in evidence. Sheriff in suit for escapes may plead general issue, &c.

SEC. 4. If any person who may be committed for debt, shall violently escape from prison, without the connivance of the sheriff or keeper, and the sheriff, jailer, or prison keeper, shall within three months next after such escape, recover the person so escaped, and recommit him to prison, there and in that case the sheriff shall be liable to nothing further than the cost of such action or actions, as may have been commenced against him for such escape. Reception of prisoner.

SEC. 5. All warrants, mittimus, writs and instruments of writing of every kind or attested copies of them, by which any prisoner may be committed, enlarged or liberated, shall be safely kept (regularly filed in their order of time) in a suitable box, for that purpose provided by the keeper of the jail, under the direction of the sheriff; and upon the death or removal of any sheriff, the box with the contents thereof shall be delivered to his successor in office under a penalty not exceeding five hundred dollars, to be paid by the sheriff so removed or his executors or administrators, in case of the death of the sheriff, to be recovered by any person who shall prosecute therefor to effect, in any court having jurisdiction. Process to be kept by jailer.

Grand jury to
examine prison-
er.

SEC. 6. It shall be the duty of the circuit court, at the beginning of the term, to direct the grand jury to inquire into the state of the prison in their respective counties, both with regard to the sufficiency of such prison, and the condition and accommodation of the prisoners; and said courts shall from time to time, take such legal measures as may best tend to secure the prisoners from escape, sickness and infection, and to have the jail cleansed from filth and vermin.

Separate rooms
shall be kept for
the sexes.

SEC. 7. The sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailer at all times provides proper meat and drink for all persons committed to the jail of his proper county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the keeper's hands; and in every case where the sheriff or jailer shall be at the expense of furnishing meat, drink, or firewood to a prisoner in jail for a crime or at the suit of the state, who is not of ability in point of property, to repay or indemnify such sheriff or jailer their reasonable expense and charges, for supplying such prisoner or prisoners; in every such case the sheriff or jailer shall make out his account therefor, and on oath shall testify to the truth of the same, before any justice of the peace or judge of the circuit court of the proper county, and on the receipt of such certificate the commissioners of said county shall audit the same; but in all civil cases, where the defendant is unable to pay the prison fees, the same shall be taxed up by the sheriff against the plaintiff which shall be recorded in the same manner as other costs; but nothing herein contained shall be construed, as to prevent the prison fees being taxed up in favor of such plaintiff, and made a part of his costs against such defendant or defendants, after he shall be liberated from such confinement.

Compensation
for keeping pri-
soners, how
made.

CHAPTER LXXXIV.

AN ACT defining and regulating Privileges.

[APPROVED FEBRUARY 17, 1838.]

Privilege of of-
ficers and mem-
bers.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the members of the General Assembly of the state of Indiana, and the secretaries, clerks, sergeant-at-arms, door-keepers, and messengers of either branch of the general assembly of this state, shall be privileged from arrest during the sitting of the legislature or either branch thereof, to which they respectively belong, and also during the time necessarily employed in travelling to and returning from the place of their meeting, allowing one day for every twenty-five miles of the distance of the road most usually travelled; and all proceedings

in suits pending, in which either of the persons above mentioned is a party, shall be stayed during the time aforesaid; and whoever shall arrest either of the persons above mentioned, during the time they are entitled to privilege as above provided, shall forfeit and pay for every such offence the sum of one hundred dollars with costs of suit, to be recovered by action of debt, for the use and in the name of the person injured; and all persons legally entitled to vote, shall be privileged from arrest during the time of their attendance at elections, and while on the way going to and returning from such elections.

Privileges of vo-
ters.

SEC. 2. The judges and clerk of the supreme court shall be privileged from arrest, while attending on the court and during the space of fifteen days next before the commencement, and for the space of ten days next after the close of any term thereof.

Privileges of
judges & clerks
of supreme ct.

SEC. 3. The judges of the several circuit courts within this state, during the sitting of their respective courts, and during the space of three days next before the commencement, and during the like space next after the close of any term thereof, and each member of the board of county commissioners, for the space of one day before any of their regular and legal sessions, during the time employed in said session, and for one day after the close thereof, and the justices of the peace, while engaged in hearing and determining any action, suit or plaint instituted before them, or either of them, and all attorneys and counsellors at law, clerks, sheriffs, coroners, and all suitors, witnesses and jurors, while attending court, and while going to and returning from court, shall be privileged from arrest.

Of circuit court
suitors and wit-
nesses.

SEC. 4. No person shall be arrested while doing and performing military duty, under the order of his commanding officer, or while going to or returning from the place of duty or parade, nor shall any person be arrested, in any place of religious worship, during the performance of divine service, or on the first day of the week commonly called Sunday, except in particular cases provided for by law, or in the chamber of the legislative body of this state during their sitting, or in any court of justice during the sitting of the court, or on the fourth day of the month of July, the anniversary of American independence; *Provided however*, That nothing in this act contained, shall be so construed as to prevent any person from arrest, if he shall disturb or molest any religious congregation while engaged in, or while met for worship, or any individual thereof.

Of militia.

Of persons at-
tending religi-
ous worship.

SEC. 5. Nothing herein contained shall be so construed as to extend to cases of treason, felony, or any breach of the penal laws of this state: *Provided always*, That where either of the members or officers of the general assembly, shall be arrested during the sitting of the legislature, upon any charge of treason, felony, or any breach of the peace, it shall be the duty of the person issuing the process on which the arrest is made, forthwith to give written notice thereof to the house in which the person arrested shall be a member, addressed to the president or speaker, as the case may be.

Criminals not
included in this
act.

SEC. 6. Nothing herein contained shall be construed to privilege any person herein named from being sued any time, when summons may be served.

Sundays and the fourth of July excepted, with a summons or notice to appear. And all arrests, not contrary to the provisions herein contained, made in any place, on any water course or river within or bounding on this state, shall be deemed lawful. And if any person shall be arrested contrary to the provisions herein contained, and forcibly detained in custody, such person may and shall be discharged by writ of habeas corpus, or in a summary way, by motion before the court from which the process shall have issued, at the cost of the party suing out such process.

All acts and parts of acts heretofore in force on the foregoing subject, are hereby repealed.

Persons illegally
arrested how
discharged.

CHAPTER LXXXV.

AN ACT defining the duties of Recorders.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That there shall be an office of record in each and every county in this state, which shall be called and styled, the recorder's office, and shall be kept at some convenient place at the seat of justice, in the respective counties, and the recorder shall duly attend the service of the same, and at the costs and charges of the proper county, shall provide good large books of royal or other large paper or parchment, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this law.

Bond.

SEC. 2. Before any recorder enters upon the duties of his office, he shall give bond to the state of Indiana, in the sum of two thousand dollars, with one or more securities, to be taken and approved by the associate judges of the proper county, conditioned for the faithful discharge of his duties, and for the preservation and safe keeping of the records and other writings belonging to his office, and for the delivery of the same to his successor in office, whole and undamaged; which bond shall be forwarded by said judges to the office of the secretary of state, to be by him filed and preserved, for the benefit of any person who may be injured by any neglect or improper conduct of said recorder, in the discharge of his official duties.

For whose benefit.

Penalty for entry before bond is given.

SEC. 3. No recorder now or hereafter appointed, shall enter upon the duties of, or officiate in his said office, before he has given such security as aforesaid, upon the pain of forfeiting three hundred dollars, one half to the proper county, and the other half to him or them that shall sue for the same, to be recovered as is provided in the fourth section of this act.

Deeds, how to be recorded.

SEC. 4. Every recorder shall keep a fair book, in which he shall immediately make an entry of every deed or writing

brought into his office for recording, mentioning therein the date, the parties and the place, where the lands, tenements, and hereditaments, granted or conveyed by the said deed or writing are situate, dating the same entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings, in regular succession, according to their priority or time in being brought into said office, and shall also immediately give a receipt to the person bringing such deed or writing to be recorded, if requested; bearing date on the same day with the entry, and containing the abstract aforesaid, for which entry or receipt he shall take no fee or reward whatever; and if any recorder shall record any deed or writing, before another first brought into his office to be recorded, or in any other manner than is hereinbefore directed, or shall directly or indirectly take or receive any fee or reward for such entry and receipt, or either of them, he shall forfeit and pay for every such offence, a sum not exceeding three hundred nor less than one hundred dollars, to the use of the proper county, to be recovered in any court of record by action of debt, bill or plaint.

To give receipt.

Penalty for violation of duty.

SEC. 5. It shall be the duty of each and every recorder in this state, to make a complete index of all deeds and instruments in writing, which have been or may hereafter be recorded in his office, to be prefixed or annexed to the volume containing the deed or instrument therein referred to, in manner following, to wit: The name of each grantor, promisor, or covenantor, shall be set down in alphabetical order, referring to the particular grantee, promisee or covenantee; and also the name of each grantee, promisee, or covenantee, shall be set down in alphabetical order, referring to the proper grantor, promisor, or covenantor, so that any person hereafter, by knowing the name of one of the parties to any deed or instrument recorded, may without delay, be referred to the same on the record.

Shall make an index.

Index to be in alphabetical order.

SEC. 6. That it shall be the duty of the recorder of each county, to record in a book provided by him for that purpose, the ear marks of cattle, sheep and hogs, and such other marks and brands of horses, mules and asses as any persons may wish to have recorded in said book; but he shall not record the same marks or brands to two different persons of the same township, and the marks and brands of each township shall be recorded separately in said book.

Record ear marks.

SEC. 7. The said recorder shall be entitled to receive of the persons employing him as aforesaid, the sum of twelve and a half cents for every such entry of marks or brands; of which entry he shall, if required, deliver a certified copy to the owner.

Fees for recording ear marks.

SEC. 8. That any mortgage that has been registered or recorded, or that may hereafter be registered or recorded, may be discharged by the officer in whose custody the record thereof shall be whenever there shall be presented to him, a certificate of payment or satisfaction, signed by the mortgagee, his personal representative, attorney in fact, or assigns, acknowledged or proved and certified by some officer authorized by the

Mortgage how discharged and satisfied of record.

laws of this state, to take the acknowledgments of deeds, which certificate and acknowledgment may be endorsed on the back of such mortgage or on a separate piece of paper to be attached thereto.

Certificate of satisfaction to be recorded.

SEC. 9. That every such certificate and the proof or acknowledgment thereof, shall be recorded on the records of the officer, in whose possession the records of the original mortgage may be, and a reference shall be made to the book and page containing the record of such mortgage, in the minute or record of such discharge by the officer, upon the record thereof, which shall operate as a full and complete discharge and satisfaction of such mortgage.

This act shall not apply to superintendents of loan office or school com'r.

SEC. 10. Nothing in this act shall be so construed as to require any acknowledgment of a satisfaction of a mortgage on the part of the superintendent of the loan office, or of any school commissioner, taken by any such officer for moneys by him loaned as such officer, but such satisfaction shall be recorded as aforesaid without such acknowledgment.

Deputies may be appointed.

SEC. 11. The same powers which are now given by any law or laws of this state, to the clerks of the circuit courts; to appoint deputies, are hereby extended to recorders: *Provided*, That each and every recorder be responsible for the acts of his deputy.

Shall record town plats.

SEC. 12. It shall be the duty of the several recorders in this state, to record all town plats by transcribing the same in a book for their better preservation, in all counties where such has not heretofore been the practice, and all bonds and other writings which shall be brought to him duly authenticated.

Penalty for neglect of duty.

SEC. 13. Every recorder who shall fail to comply with the requisitions of this act, shall be liable to the penalties provided in the 4th section of this act.

Vacancies how filled.

SEC. 14. That in all cases where the office of recorder shall become vacant by death, resignation, removal or otherwise, it shall be the duty of the board doing county business, in the county in which such vacancy shall so happen, to appoint some suitable and qualified person to fill the same; who shall previously to entering upon the duties of his office, give bond and security for the faithful discharge of the same, in like manner, and under like rules and regulations as are prescribed in the second section of this act, who shall continue in office until the time of the next general election, at which time an election shall be held to fill such vacancy as aforesaid.

AN ACT providing for the Recording of Mortgages for Personal Property.

[APPROVED FEBRUARY 17, 1838.]

Mortgages on personal property may be recorded.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every conveyance in the nature of a mortgage, which shall hereafter be made and executed in regard to any personal property within this state, shall be acknowledged or proved and recorded within twenty days after the execution

thereof, in the office of the recorder of the county in which said mortgage may be so executed.

SEC. 2. All laws and parts of laws contravening the provisions of this act be, and the same are hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPTER LXXXVI.

AN ACT for rendering authentic as evidence in the courts of this state, the public acts, records and judicial proceedings of courts of the United States.

[APPROVED JANUARY 10, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every act of the legislature of any one of the United States, or any of the territories of the United States, certified by the secretary, and having the seal of such state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit, when offered in evidence, in any court of justice within this state.

SEC. 2. The records and judicial proceeding of the several courts of or within the United States, or the territories thereof, shall be admitted in the courts of justice in this state, by the attestation or certificate of the clerk or prothonotary and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges or the presiding magistrate of either such court, as the case may be, that the person who signed such attestation or certificate, was at the time of subscribing it, the clerk or prothonotary of such court, and that such attestation is in due form of law; and the said records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them, in any court within this state, as by law or usage they have in the courts of the United States, or any one of the states or territories, whence the said records are or shall be taken.

SEC. 3. This act to be in force from and after its publication.

CHAPTER LXXXVII.

AN ACT regulating distress for rent.

[APPROVED FEBRUARY 17, 1838.]

Distress how
made, and war-
rant how ob-
tained.Oath and its re-
quisites.Tenant may re-
plevy in five
days.Notice of dis-
tress to be given.Appraisement
after five days.Appraiser's
oath.Sale of goods af-
ter ten days notice.Rescue of goods,
how punished.Distress not to
be driven out of
county.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be lawful for any landlord, his, her or their agent or attorney, to make distress for rent, by virtue of this act, by obtaining a warrant from some justice of the peace of the proper township, where such distress shall be made, directed to some constable of said township, to be issued on complaint upon oath, describing the premises for which such rent shall or may be claimed as due, and in arrear, in what payable, when due, and the amount thereof; and that he is fearful he shall lose his rent by attempting to collect it as other debts are collected.

SEC. 2. That when any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained, shall not within five days after such distress taken, and notice thereof, with the cause of such taking, shall have been left at the dwelling-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same with sufficient security, as is provided for in the act regulating the action of replevin, then and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining or his agent duly authorized, shall and may, with the constable executing such warrant, cause the goods and chattels so distrained, to be appraised by two reputable householders, who shall have and receive for their trouble the sum of fifty cents per day each, and shall first take the oath or affirmation following: "I A. B. will well and truly, according to the best of my understanding, appraise the goods and chattels of C. D. distrained on for rent by E. F.," which oath or affirmation, such constable executing such warrant is hereby empowered and required to administer; and after such appraisement, shall and may, after ten days public notice, lawfully sell the goods and chattels so distrained, for the best price that can be got for the same, for and towards satisfaction for the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said constable executing such warrant, for the owner's use.

SEC. 3. That upon any pound breach, or rescue of goods and chattels distrained for rent, the person or persons aggrieved thereby, shall in a special action on the case for the wrong sustained thereby, recover treble damages and costs of suit, against the offender or offenders in such pound breach or rescue, or any or either of them, or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession. No property distrained shall be driven out of the county in which it was taken, and such removal shall be considered a trespass; and if committed

by a landlord on the property of his tenant, shall be punished by exemplary damages, in action of trespass *quare clausum fregit*: distresses shall be reasonable, and he that takes great and unreasonable distress, shall be punished in the same manner, as for driving property so taken out of the county.

SEC. 4. That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear or due, when in truth no rent shall appear to be in arrear or due to the person or persons distraining, or him, her, or them in whose name or names or right, such distress shall be taken as aforesaid, then the owner of such goods and chattels distrained and sold as aforesaid, his, her or their executors or administrators, shall and may by action of trespass on the case, to be brought against the person or persons so distraining, any or either of them, his, her or their executors or administrators, recover double the value of the goods and chattels so distrained and sold, together with full costs of suit.

SEC. 5. The goods and chattels of any tenant, lying and being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years or otherwise, taken by virtue of any execution, shall be liable for the payment of all such sum or sums of money, as are or shall be due from such tenant for rent of the premises, at the time of taking such goods and chattels, by virtue of such execution, and the said sheriff or other officer, shall, after sale of the said goods and chattels, pay to the landlord or other person empowered to receive the same, such rent so due, if so much shall remain in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs, in such execution mentioned: *Provided*, That said rent so to be paid to the landlord, shall not exceed one year's rent: *Provided further*, That before such payment be made by the sheriff or other officer to the said landlord, such landlord shall prove his claim before a justice of the peace of the proper county, and such sheriff or other officer, shall after having received notice of such claim, withhold the payment of the money so collected, until such landlord shall have had an opportunity to prove such claim, for a term of time not exceeding thirty days; and such execution plaintiff, his agent or attorney, shall have six days notice of the time and place of making such proof, if such execution plaintiff, his agent or attorney, shall reside within the county, but if such execution plaintiff, his agent or attorney does not reside in the county, then notice of the time and place of making such proof, shall be left with the sheriff or other officer who may have such execution in his hands, and a certificate from such justice, that due proof has been made by such landlord, shall be sufficient authority for such sheriff or other officer to pay the amount, not exceeding one year's rent, so proven as aforesaid, to such landlord; and in all cases of appeal from the decision of any such justice, the sheriff or other officer shall hold such moneys in his hands until the determination of said suit.

Distress shall be
reasonable.Penalty for dis-
training and sel-
ling where no
rent is due.Landlord's lien
on property on
the premises, tak-
en on execu-
tion.Officer to pay
over money to
landlord.Not more than
one year's rent.
Landlord shall
first prove his
claim before j.

Notice of claim:

Notice of prov-
ing claim.Justice's certi-
cate to officer,
of proof of
claim.On appeal, offi-
cer shall hold
money.

Second distress authorized.

SEC. 6. In all cases aforesaid, where the value of the goods distrained shall not be found to be the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may from time to time, distrain again for the residue of said arrears.

Goods removed to avoid distress, shall be liable wherever, &c.

SEC. 7. In case any lessee or tenant of any messuage, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall fraudulently or clandestinely, convey or carry off from such demised premises, his goods or chattels, with a view to prevent the landlord or lessor from distraining the same for arrears of such rent, so reserved as aforesaid, it shall and may be lawful, to and for such landlord or lessor, or any other person or persons by him for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same may be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of, in the same manner as if such goods and chattels had actually been distrained by such lessor or landlord, in or upon such demised premises, for such arrears of rent: *Provided*, That nothing herein contained, shall empower such landlord or lessor, to take or seize any such goods or chattels as a distress for arrears of rent, which shall be *bona fide*, and for a valuable consideration, sold before such seizure made, to any person or persons not privy to such fraud as aforesaid.

Unless bona fide sold before seizure.

Lessor may distrain cattle and corn, &c. growing.

SEC. 8. It shall and may be lawful to and for every lessor or lessors, landlord or landlords, or their bailiffs, receivers or other person empowered by him, her or them to take and seize as a distress for arrears of rent, any cattle or stock of their respective tenants, feeding, pasturing or being upon all or any part of the premises demised or holden, and also to take and seize all sorts of corn, grass, hops, roots, pulse or other product whatever, which shall be growing on any part of the estate or estates so demised or holden, as a distress for arrears of rent; and to appraise, sell or otherwise dispose of the same, towards satisfaction of the rent, for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained and disposed of; and the purchaser of any such corn, grass, hops, roots, pulse or other product, shall have free ingress, egress and regress, to and from the same where growing, to repair the fences from time to time, and when ripe, to cut, gather, make, cure, lay up and thrash, and after, to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

Claim of property distrained, how tried.

SEC. 9. That if any person or persons, other than the tenant, shall claim any property which may be distrained under the provisions of this act, such claimant shall have a trial of the right of property, under such restrictions and regulations as are provided for the trial of the right of property taken under execution.

SEC. 10. In all cases of distress for rent, if the tenant will within ten days after distress made, confess judgment in favor of the landlord, for the amount of rent due, before some justice of the peace, and give good security for the payment thereof, to be approved by the justice as other judgments are stayed, and pay the costs of the distress, the property distrained shall be forthwith discharged. Distrained may be discharged by confession and replevying judgment.

SEC. 11. It shall and may be lawful for any person or persons having any rent in arrear or due, upon lease for life or lives, or for one or more years, or at will, ended and determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined: *Provided*, That such distress be made during the continuance of such lessor's title or interest. Distress after lessor's term.

SEC. 12. Beasts of the plough, sheep and the implements of a mechanics trade, shall not be distrained for rent, until other chattels sufficient for the demand cannot be found. Property exempt from levy and sale under execution, personal property deposited with a tenant with the consent of the landlord, or hired by such tenant, or lent to him with the like consent, shall not be distrained for any rent due to such landlord, nor shall any other property belonging to any other person, than the tenant, which shall have accidentally strayed on the demised premises, or which shall be deposited with a tavern keeper, or keeper of a boarding house, or with the keeper of any ware house, in the usual course of business, or deposited with a mechanic or other person, for the purpose of being repaired, or manufactured, shall not be subject to distress, or sale for rent, but the officer making the distress shall not be liable for seizing and selling property not belonging to the tenant unless before such taking or sale, notice of the claim of a third person be given to said officer. What property shall be exempt from distress & sale.

SEC. 13. Whenever any person or persons have had the use and occupation of any lands, tenements or hereditaments, in any other manner than by express contract, the reasonable value of such use and occupation, may be recovered from him, her or them, by the party equitably entitled to the same, in an action of assumpsit, before any court of competent jurisdiction. Remedy for use and occupation.

CHAPTER LXXXVIII.

AN ACT regulating the action of replevin.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the several circuit courts within this state, be and they are hereby invested with jurisdiction to issue writs of replevin in the manner and in the cases hereafter prescribed. Circuit c. may issue writs of replevin.

Affidavit.

SEC. 2. Whenever hereafter any person or persons shall tortiously take, and unjustly and unlawfully detain or lawfully acquire and unjustly and unlawfully detain any of the personal goods of any other person or persons whomsoever, such person or persons so aggrieved, may replevy his, her or their property so taken and detained as aforesaid.

Causes of replevin.

SEC. 3. Before any person or persons shall be entitled to the benefit of said writ, such person or persons, his, her, or their agent or attorney shall file in the clerk's office from which said writ issues, an affidavit made before the clerk of said court or some other person authorized to administer oaths, that the goods and chattels sought to be replevied, are unjustly and unlawfully detained by such defendant or defendants; naming him, her, or them from the plaintiff or plaintiffs, naming him, her, or them.

Clerk shall issue writ, and mandate thereof.

SEC. 4. When such affidavit is made and filed as aforesaid, the clerk in whose office it is deposited, shall forthwith issue a writ of replevin, directed to the proper officer of the county, commanding him to take into his custody, the particular goods and chattels described in said affidavit, and them safely keep until said plaintiff or plaintiffs shall well and truly satisfy him by good and sufficient pledges, that he, she or they will well and truly prosecute said writ to effect, and return such goods and chattels, provided a return on final hearing of the cause, should be adjudged by the court, to the defendant or defendants.

Sheriff shall take from plaintiff, bond to prosecute and return goods, &c.

SEC. 5. The sheriff or other officer to whom the aforesaid writ shall be directed, before he delivers the goods and chattels taken by virtue of the same, to the plaintiff or plaintiffs in such writ, shall take from him, her or them, a penal bond, in double the value of the property replevied, with security to the acceptance of said sheriff or other officer, and in his own name, conditioned for prosecuting such suit with effect and without delay, and for duly returning said goods and chattels, in case a return thereof should be awarded. And the said sheriff, or other officer taking such bond, shall at the request of the defendant, assign said bond to said defendant; and if said bond be forfeited, the said defendant may bring an action thereon in his own name, as such assignee, and shall recover such sum as shall be just and equitable; and if the plaintiff shall recover, he shall in like manner recover damages for the detention of such goods and chattels, to be determined by the jury who try the case, or by one to be empanelled for that purpose.

Sheriff shall assign bond to defendant & action thereon, if forfeited.

Damages.

If bond be not given to sheriff, he shall return the goods.

SEC. 6. After the sheriff or other officer has replevied any goods or chattels by virtue of this act, if the person or persons so replevying the same, shall fail or refuse to give bond as by this act required, within twenty four hours, such officer shall immediately thereafter return said goods and chattels, to such defendant or person from whose custody they were taken, and take his, her or their receipt for the same.

In a case of non-suit, &c. before issue, defendant

SEC. 7. Whensoever any plaintiff in replevin shall be nonsuited, or have judgment against him on demurrer, before issue joined, the defendant making a suggestion in the nature of an

avowry or cognizance for rent, to inform the court of the cause of distress, the court upon his prayer, shall direct an inquiry by jury, touching the sum in arrear at the time of such distress taken, and the value of the goods and chattels distrained; and upon such inquisition the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods and chattels distrained shall amount to that value; and in case they shall not amount to that value, then so much as the value of such goods and chattels so distrained shall amount to, together with his full costs of suit, and shall have execution thereupon as in other cases: and in case such plaintiff shall be nonsuited after cognizance or avowry made and issue joined, or if the verdict shall be given against such plaintiff upon demurrer, then the jury empanelled shall inquire concerning the sum of the arrears and the value of the goods and chattels distrained; and thereupon the avowant or he that makes cognizance shall have judgment for such arrearages, or so much thereof as the goods and chattels distrained amount to, together with his full costs of suit, and shall have execution for the same as in other cases.

Judgment for defendant for amount due, or the value of the goods.

In what cases the jury may assess damages.

SEC. 8. It shall be lawful for all defendants in replevin in case of distress for rent, to avow and make cognizance generally, that the plaintiff in replevin or other tenant of the lands whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent or service, during the time wherein the rent or service distrained for accrued, which rent or service was then and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors; and if the plaintiff or plaintiffs in such action in case of distress for rent shall become non-suit, discontinue their action, or have judgment given against him, her or them, the defendant or defendants in such replevin shall recover double costs of suit.

Def't may avow generally for rent.

Judgment shall carry double costs.

SEC. 9. Nothing herein contained shall be so construed as to extend the privilege of said writ to any execution defendant to replevy property taken by virtue of such execution by any officer of this state.

Writ shall not extend to execution defendant.

CHAPTER LXXXIX.

AN ACT to provide for distributing so much of the surplus revenue of the United States, as the state of Indiana may be entitled to and receive by virtue of an act of congress, approved 23d June, 1836.

[APPROVED FEBRUARY 6, 1837.]

SEC. 1. Be it enacted by the General Assembly of the State of Indiana, That the surplus revenue of the United States, deposited, or which may be deposited in the treasury of this state by virtue of an act of congress, approved 23d June, 1836, be

Treasurer allowed to hire a clerk.

and the same is hereby disposed of upon the conditions and restrictions hereinafter provided. And if the increase and additional services required from the treasurer of state by virtue of this act render the services of an additional clerk necessary, the treasurer aforesaid shall be allowed to hire one. And for the purpose of enabling said treasurer to employ and pay said clerk hire, he shall be allowed not exceeding five hundred dollars per annum, to be paid quarterly, as other claims are paid.

Mode of funding the revenue.

SEC. 2. One half of said revenue shall be funded, as hereinafter provided, in the respective organized counties of the state, and such as may become organized during the present session of the general assembly, each county being entitled to and receiving an amount proportionate to the number of its taxable polls, that did or shall pay tax for the year 1836: *Provided, however,* That the counties with less than three hundred taxable polls, shall receive the same proportion of said revenue as if they had three hundred polls: *Provided however,* That all counties containing more taxable polls than three hundred and less than seven hundred, shall have added thereto seventy-five polls, but no such addition to any county containing a less number of polls than seven hundred, shall increase the same to more than seven hundred.

Apportionment among the counties.

SEC. 3. The number of polls returned, or hereafter to be returned, to the office of the auditor of state, in the assessment of taxes made for the year 1836 or 1837, shall be taken as the number of polls, in each county, in said distribution of said surplus revenue, for five years; and at the end of said five years, the amount of taxable polls then returned as above, shall be the foundation of the apportionment of said surplus revenue as above; and at the end of five years thereafter, the same, so on, altering the proportion of said surplus revenue, which each county has a right to claim, every five years, according to the then return of taxable polls: *Provided,* That nothing herein contained shall be so construed as to prevent any county from making a return of the number of its taxable polls, as is now by law provided, at any time previous to its drawing the amount herein provided for said county.

An agent appointed in each county.

SEC. 4. There shall be annually appointed in each county, by the legislature, an agent, who shall enter into bond with security, to be approved of by the board doing county business in said county, in the penal sum of at least double the amount which the county may be entitled to by the provisions of this act, conditioned for the faithful discharge of all the duties required of him by this act, or any act which may be amendatory thereto; and the bonds of the said agents shall be filed in the office of the clerk of said county, whose duty it shall be to record the same in some book kept by him for that purpose, a certificate of which filing and recording from under the hand and seal of office of said clerk, shall be filed with the treasurer of state, before the said agents shall receive the proportion of money to be refunded in the county in which said agents may respectively reside, and the same shall be carefully preserved

His duty.

To give bond.

by the said treasurer, in his office, nor shall any person hold said office unless he be a qualified voter in said state.

SEC. 5. The bonds of the said agents shall be made payable to the state of Indiana, and it is hereby made the duty of the treasurer, whenever hereafter any such agent shall fail or refuse to pay over any moneys in his hands, according to the provisions of this act, or shall otherwise fail to comply with any of its provisions, to commence suit against such agent, upon his aforesaid bond, in the name of the state of Indiana, and proceed to final judgment and execution thereon, and if any such agents shall so fail or refuse, his agency shall from thenceforth expire, and a successor shall be forthwith appointed, as hereinafter provided, and said agent, so removed, shall when demanded, hand over to his said successor all moneys and papers in his hands, belonging to his said agency.

Treasurer shall pay over the proper amount to agent.

SEC. 6. Each of said agents, upon having entered into bond, as above required, and having taken an oath, before the clerk of the circuit court, to faithfully discharge all the duties required of him by law, as agent aforesaid, may thereafter apply to and receive from the treasurer of state, (first producing to him, as aforesaid, a certificate from the clerk of his county, of his having entered into bond and taken the oath as above required,) the full amount of said surplus revenue, that the county for which he is agent is entitled to by the provisions and conditions of this act.

SEC. 7. Upon the agent's receiving the money, to which under the provisions of this act his county is entitled, he shall loan it out at eight per centum interest per annum, to the citizens residing in said county, and to none others, under the following restrictions and regulations: he shall upon the reception of any such sum, and previously to his making any loan of any part thereof, advertise or publish, by written or printed notice, to be posted up at the place of general elections in each township in the county, that such funds have been received, and are ready to be loaned, specifying the day upon which he will commence loaning and giving at least ten days notice thereof.

Agent to loan the money.

SEC. 8. The agent, in loaning money under the provisions of this act, shall take bond with a mortgage upon real estate, which he must be fully satisfied is worth double the amount for which it is mortgaged, and that the title thereto is good, and can be evidenced by a title regularly and legally derived from the United States government, or of the state of Indiana: *Provided,* That in all cases, where the patent for any mortgaged premises shall have been lost, mislaid, or otherwise placed out of the reach of the mortgager, its absence may be supplied by the certificate of the register of the land office, in the district of lands in which said mortgaged premises may lie, that said patent or certificate of purchase, was issued from the United States: *Provided, also,* that the mortgager shall accompany his application for said fund, in every instance before any loan shall be made to him, with the certificate of the recorder of said county, that there is no mortgage on said premises recorded or

Shall take bond and mortgage.

filed in his office, and of the clerk of the circuit court of the county in which said mortgaged premises may lie, that there is no judgment of record in his office against said mortgager, or any transfer or lien whereby the validity of said title may be impaired upon said mortgaged premises: *Provided also*, That where the title to any land proposed to be mortgaged, shall be derived from any grant or donation other than from the United States, a regular chain of title to the confirmation of said grant by the United States, shall be sufficient: *Provided*, That if said mortgaged premises are held by certificate, the duplicate certificate of the receiver shall be retained with the mortgage by the agent, until the said mortgage shall be discharged.

May loan upon
personal securi-
ty.

SEC. 9. The agent making the loan in the above section provided, upon mortgaged premises, shall estimate the value of the same, exclusive of any buildings thereon; or he may loan said fund, by taking bond with, at least, two sufficient personal securities, who are freeholders within the county, and which he shall believe of undoubted responsibility, and in each case the interest must be paid in advance.

Term of loan,
when made on
mortgage.

SEC. 10. Said fund may be loaned upon mortgaged premises aforesaid, for any term of time not exceeding three years: *Provided*, That if the same is loaned for any term of time more than one year, one third of the principal of said loan shall be paid at the expiration of each year, after the date of said mortgage, with the interest of each year paid annually in advance, as above provided, which one-third shall be again loaned by said agent, persons not having previously borrowed being entitled to preference.

When loaned on
personal securi-
ty.

SEC. 11. Where said fund is loaned upon personal security, as aforesaid, it shall be loaned for the term of one year, and the borrower thereof, at the expiration of said year, shall, upon the payment of one-third of the principal and the interest upon the remaining two-thirds, be permitted to retain said two-thirds for the term of one year longer, and so on, annually, until said fund is all paid by said borrower, the said agent in each instance requiring the interest annually in advance—he shall also take bond, payable twelve months after date, with the following conditions to wit: that if the agent, at any time, shall desire and demand other additional security, in any such bond, it shall be forthwith given; and upon failure, neglect or refusal upon the part of the obligor in such bond, to give such additional security, after ten day's notice given in writing by said agent, the said bond shall be considered from thenceforth as due, and the agent shall immediately proceed to collect the same, as herein provided.

Agent's fee, by
whom paid.

SEC. 12. In addition to the eight per centum per annum interest, which the borrower is herein bound to pay in advance, upon the sum borrowed, he or they shall likewise pay to the agent, one per cent. upon said borrowed money, and said one per cent. upon all the sums loaned by the agent, under the provisions of this act, shall alone constitute the compensation to such agent for all his responsibility, and for all the services by this act required of him.

SEC. 13. The agent shall not loan more than four hundred dollars to any one individual, and the entire amount of interest received by him under the provisions of this act, it shall be his duty to pay over to the school commissioner of the county, so soon as it is received, to be directed and set apart semi-annually on the first Monday of March and September to the several townships according to the number of taxable polls in each, to be paid over to the several township treasurers or their order at any time after such dividend; *Provided*, That in case there should be any township in any county that is unorganized, the school commissioner shall loan any portion of money set apart to such township or townships as other school funds for the use of such township. *And provided also*, That the said commissioners shall make a distribution of said interest among said townships, so soon as it is received by him.

Shall not loan
more than \$400
to one person.

Shall pay inte-
rest over to
school com'r.

Shall distribute
among the
townships.

SEC. 14. All the interest accruing to the state from the said one half of the said surplus fund, thus distributed amongst the several counties of the state, shall be, and it is hereby appropriated for the term of five years.

SEC. 15. It shall be the duty of the agent in each county, to have all mortgages recorded in the recorder's office of the county for which he is agent; for the recording of which, the said recorder shall be entitled to receive twenty-five cents, which the borrower shall pay, together with all other reasonable charges and expenses, for the investigation of his right and title to the premises proposed to be mortgaged, and all costs necessarily accruing or incidental to his borrowing money under the provisions of this act.

Mortgages to be
recorded.

SEC. 16. Whenever payment is not made to the agent on his demand, or otherwise by virtue of any of the provisions of this act, a foreclosure of the mortgage by suit, may be made, and the mortgaged premises sold, as provided by law, in cases of mortgages to individuals.

Mortgage fore-
closed.

SEC. 17. The treasurer of state, upon receiving said surplus revenue, or any part thereof, shall forthwith advertise the same in two of the newspapers published at the seat of government and of general circulation throughout the state, three weeks successively, stating in such advertisement what amount each county shall receive; and if any county, through its agent, fails or neglects to make legal application, for its portion of said surplus revenue, allotted to it by the provisions of this bill, within ninety days after said notice shall have been given, as above provided for, then the said treasurer shall loan it out as at present he is authorized to loan the college fund; and the interest accruing thereon, shall be distributed, according to the provisions of this act, among the townships of said county for the purpose of common schools: *Provided*, That the counties to be organized under any act of the present session of the general assembly, shall not forfeit their proportion of said surplus revenue as above, if their agent draws for the same, at any time before the first of July next.

Treasurer shall
give notice.

Agent failing to
apply, treasurer
to loan out &c.

SEC. 18. If any person appointed under the provisions of this act, should fail, neglect, or refuse to serve as agent aforesaid,

Agent failing to
accept, commis-
sioner to ap-
point.

said, or if after receiving said appointment, as agent, shall resign, die or remove from the county for which he is appointed, then and in that case, it shall be and is hereby made the duty of the board doing county business in said county to appoint some suitable person, who shall qualify himself, in all respects, in the same manner as is prescribed in the foregoing sections of this act: *Provided*, That the said agent shall inform the clerk of the circuit court of the county in which he resides, of his intention to fail, neglect or refuse to serve or to resign or remove as aforesaid, whose duty it shall be to forthwith notify the board doing county business thereof: *Provided, also*, That to carry into effect any of the provisions of this act, it shall and is hereby made lawful for the board doing county business in any of the counties of this state, to meet at such time as is necessary, which meeting and the proceedings thereof, shall be entered of record on the books of said board.

SEC. 19. The agent so appointed, as is above provided in the 18th section of this act, by the board doing county business, shall serve as such, until his successor shall be chosen, and qualified by the general assembly at its session immediately thereafter.

Form of mortgage.

SEC. 20. The mortgage to be taken in security by the agent, shall be in the following form, to wit:

Know all men by these presents, that I, A B, of the county of _____, in the state of Indiana, for and in consideration of the sum of _____ dollars of the surplus revenue of the United States, deposited with the state of Indiana, to me in hand paid by C D, agent of said state of Indiana, for loaning that part of said revenue to which said county is entitled, by virtue of an act of the general assembly, approved February 1837, have granted, bargained and sold, and do, by these presents, grant, bargain, sell, and confirm unto the said state of Indiana, all that tract or parcel of land, situate in said county of _____ and known and designated as (here describe the premises particularly:)

To have and to hold the said premises, so bargained and sold as aforesaid, to the use and behoof of the said state of Indiana, forever. And I, the said A B, do hereby covenant to and with the said state of Indiana, that I am lawfully seized in fee of the aforesaid premises, and have good right and authority to sell and convey the same as aforesaid, and that I will forever warrant and defend the same, to the said state of Indiana, from the claim or claims of all persons whomsoever.

Conditioned, nevertheless, that if I, the said A B, shall well and truly pay or cause to be paid to the said state of Indiana, the sum of _____ dollars, according to the conditions, true intent and meaning of a bond, by me executed to the said state of Indiana, bearing even date herewith, for the aforesaid sum of _____ dollars, then this mortgage to be discharged, otherwise to be and remain in full force.

In witness whereof we the said A. B. and E. F. wife of said A. B., who hereby relinquishes her right of dower to the above

mentioned premises, hereunto set our hands and seals this day of _____, in the year of our Lord, one thousand eight hundred and thirty _____.

[L. S.]
[L. S.]

Which aforesaid mortgage shall be acknowledged by said mortgager and wife of said mortgager, in such manner as is now provided by law for the acknowledgment of deeds of absolute conveyance, and shall be valid to all intents and purposes; and if said acknowledgment shall be taken before the recorder of the county, he shall not be entitled to receive any fee therefor other than the twenty-five cents herein allowed for recording the same.

SEC. 21. In addition to the mortgage deed aforesaid, the mortgager shall execute, to said agent, a bond, in the following form, to wit:

Know all men by these presents, that I, A. B., of the county of _____ and state of Indiana, have this day borrowed _____ dollars of the state of Indiana, by C. D. her agent for the county of _____ aforesaid, to loan out that part of the surplus revenue of the United States which is allotted to said county, by an act of the general assembly of said state, approved February 1837. This is therefore my obligation to pay to the said state of Indiana the said sum of _____ dollars, in three equal annual payments, with the interest in advance for the remaining payments, at the expiration of each year, at eight per centum per annum: As witness my hand and seal the day of _____ 183 ____.

[SEAL.]

Which form shall be observed by the agent in taking bonds for the payment of all such loans.

SEC. 22. All judgments rendered in any court having competent jurisdiction, upon any notes with personal security, as above provided, shall draw interest, at the rate of eight per centum per annum.

SEC. 23. The individual applying for a loan upon mortgage, shall, in addition to the previous requisitions of this act, file an affidavit with the agent, who is hereby authorized to administer an oath to such affiant, that there is no incumbrance of any kind, and no superior claim to his own in law or equity, to the mortgaged premises aforesaid—and any person swearing falsely, in such affidavit, shall be subject to all the pains and penalties provided by law for wilful and corrupt perjury.

SEC. 24. It shall be the duty of the agent in each county, as well as the school commissioner, to report to the treasurer of state, quarterly, and it is hereby made the duty of said treasurer to report the same to the general assembly annually: and if it shall appear by the report of the commissioner aforesaid, that the agent has not paid over any interest in his hand, according to the provisions of this act, then it shall be the duty of the treasurer aforesaid, to commence suit upon the bond of said agent, as provided in this act. The said agent shall also keep a careful register of the names, date and amount of all such mortgages taken by him, which he shall enter in tabular

Judgments to draw interest.

Applicant shall file affidavit.

Agent to report to treasurer.

Treasurer to report to legislature.

Agent to keep a register of mortgages.

form, in a book kept by him for that purpose, in which he shall also enter, in appropriate columns, according to the form which may be furnished him by the treasurer aforesaid, the interest paid for each year, on the proper loan, and the amount refunded, and it is hereby made the duty of said treasurer, on the receipt of the reports from the said agent, to cause proper entries to be made in his office, of such loans, interests, loans refunded &c., and also, to furnish the said agent with forms of such entries as are hereby required of him to be made.*

Lien not to be discharged by lands forfeited for nonpayment of tax.

SEC. 26. Whenever hereafter the tax shall not be paid on any lands mortgaged under this act, or any lands mortgaged to the state of Indiana for loans of the sinking fund, or loans to pay the second and third instalments of bank stock, or for loans of the college fund, or for loans made of any other funds in the hands of the treasurer of state, and such land shall be returned as delinquent to the office of school commissioner, and shall be forfeited for the non-payment of said tax, the lien of such mortgage shall not be discharged by any such non-payment, forfeiture or any sale by such school commissioner, but the same shall be sold subject to such mortgage.

SEC. 27. The first section of an act entitled "an act supplemental to an act entitled an act to authorize the loaning of the seminary funds," approved January 24th, 1828, be and the same is hereby repealed.

Remaining to be subscribed as stock to state bank.

SEC. 28. That of the remaining half of said surplus revenue, the sum of two hundred and eighty thousand dollars, or such sum as shall remain after the appropriation of the same to the state capital as below provided, shall be subscribed and paid over as stock, on the part of the state, in the branches of the state bank, under the direction of the state board, in such branches, and such amounts of stock, as to them shall seem best, having in view the safety of the institution and the profitable investment of the said stock: *Provided*, That not more than fifty thousand dollars shall be subscribed in any one branch, and the same to be a permanent addition of state capital in such branch assessed in shares so as to be equal to the other shares of state stock in said branch according to the 34th section of this act: *Provided further*, That the provisions of the 30th section of this act shall be carried into effect, so far as depends on the board of directors of the state bank before the subscription of stock as provided in this section.

First instalment, how paid.

SEC. 29. The first instalment of fifty thousand dollars, for the twelfth branch shall be subscribed and paid out of said fund as state stock in the same, as soon as such branch is organized according to the provisions of the charter, and the third instalment in the eleventh branch shall be also paid out of the said fund.

Additional branches to be located.

SEC. 30. It shall be the duty of the president and directors of the state bank to locate not less than three, nor more than four additional branches, at their discretion, at such time and place as they may think the public interest requires, and the

* For names of agents, see first section of act of 1833, printed in this chapter.

payments of stock on the part of individuals shall be in such instalments as said directors shall require, and as soon as instalments are paid by individuals, an equal amount shall be paid by said directors on the part of the state, but no branch shall go into operation until the sum of eighty thousand dollars is actually paid in; and the capital in each such branch shall be eventually made to be equal to the original capital in each branch, one hundred and sixty thousand dollars—being equally owned by the state and individuals, and the additional branches authorized by this act, to be located, shall be subject to all the provisions of the act entitled an act establishing a state bank, approved January 28, 1834, except as is otherwise provided in this act with regard to the location of said branches, their subscription and payment of stock, organization and appropriations of profits, whether on the stock of new branches or increase of capital.

SEC. 31. So much of the third and fourth instalments of the said surplus fund, (the first and second instalments being hereby set apart for distribution, as aforesaid, in the counties of the state) as shall be required, for the purposes in the said 28th and the remaining sections provided, shall be paid over by the treasurer of state to the order of the president and directors of the state bank.

Treasurer to pay over to bank.

SEC. 32. The dividends on said stock shall, as soon as declared, be reported and paid over to the fund commissioners or other person authorized by law to receive the same, and shall be by them applied to the payment of the interest on the state bonds for the purposes of internal improvement.

Dividend on stock to be paid over to fund com'r.

SEC. 33. Before the 28th section of this act shall take effect and be in force, the consent of the state bank and branches thereto, shall be given according to the provisions of the 108th section of the charter of said state bank, evidence of which shall be filed in the office of the secretary of state and a record thereof made in said office.

Consent of state bank & branches to be obtained.

SEC. 34. That the surplus which may be in any branch bank, at the time of increasing the capital thereof, agreeably to the provisions of this act, shall be set apart for distribution among the stockholders, entitled to the same; at the time of such increase aforesaid, to be distributed, at such time and in such manner as the state directors shall direct, and all stock taken in the organized branches shall be on an equality, with individual stock in such branch: *Provided*, That the state directors shall have the power to make contribution from the new stock (taken in the existing branches under the provisions of this act,) to the surplus fund belonging to the original stock at the time of the increase of the capital as aforesaid, so as to equalize the same; and in case such contribution shall be made as herein directed, then and in that case, such distribution of the surplus as above directed shall not be made by the state directors as above directed.

Surplus on hand at the time of increasing the stock, how disposed of.

SEC. 35. If the said portion of said revenue by this act provided be placed in said branch banks, shall not be received by said branches, it shall be the duty of the treasurer of state to

On failure of branches to receive the amt due them to be paid over to sinking fund.

pay the same over to commissioners of the sinking fund, whose duty it shall be to loan the same, under the same restrictions and regulations, and in the same manner as is now provided by law for loaning the sinking funds, the interest of which shall be subject to the order of the fund commissioners, or other persons authorized by law to receive the same, to be by them applied as is provided in the 32d section of this act; and it is also hereby made the duty of the said board of commissioners to report the same in the same manner as is provided in the 32d section aforesaid.

Fund commis-
sioner to loan
the same.

Sec. 36. While any part of said half-equal portion of such surplus revenue appropriated to state investment in bank capital shall remain unapplied, the same shall be loaned out by the commissioners of the sinking fund as above provided, except that the length of time of such loan shall be made to conform with the prospective demand for said fund to the purposes of state capital above contemplated; the interest of which temporary [loan] to be applied as provided the 32d section of this act; which unappropriated balance shall be paid over by the treasurer of state to the commissioners of the sinking fund.

This act to take effect and be in force, except as provided herein, from and after its passage.

AN ACT to amend an act, entitled, "an act to provide for the distributing so much of the surplus revenue of the United States as the state of Indiana may be entitled to and receive by virtue of an act of congress, approved 23d June, 1836, (approved February 6, 1837.)

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the following persons be, and they are hereby appointed agents for loaning and managing the surplus revenue for one year from the first day of March, 1838, to which period the present agents are authorized to act as such:—

Allen county,	Joseph Morgan,
Adams county,	John K. Evans,
Bartholomew county,	Joshua Sims,
Boon county,	Addison Lane,
Brown county,	William Taggart,
Clark county,	George Schwartz,
Clay county,	John Osborn,
Crawford county,	Joseph N. Phelps,
Carroll county,	Samuel Grimes,
Cass county,	Gillis McBean,
Clinton county,	John H. Dunn,
Dearborn county,	William Perry,
Decatur county,	A. R. Forsyth,
Daviess county,	William C. Berry,
Dubois county,	Daniel Harris,
Delaware county,	David Kilgore,
Elkhart county,	Joseph Gregory,
Fayette county,	John Willey,
Floyd county,	Robert Downes,

Franklin county,	John M. Johnson,
Fountain county,	Franklin Merrill,
Fulton county,	Alexander Chamberlin,
Gibson county,	John Hargrove,
Greene county,	John Jones, jr.
Grant county,	M. C. Woodworth,
Hamilton county,	H. W. Clark,
Harrison county,	Arthur Vance, jr.
Hendricks county,	W. L. Matlock,
Henry county,	Jonathan Macy,
Hancock county,	Jonathan Dunbar,
Huntington county,	George A. Fate,
Jackson county,	Media W. Shields,
Jefferson county,	Jesse D. Bright,
Jennings county,	Alanson Andrews,
Johnson county,	Fabius M. Finch,
Jay county,	Henry Welch,
Knox county,	William Scott,
Kosciusko county,	Metcalf Beck,
Lawrence county,	Alexander H. Dunnihue,
Lagrange county,	E. Littlefield,
Laporte county,	John Brown,
Madison county,	Willis G. Atherton,
Marion county,	John Elder.
Martin county,	Thomas Gootee,
Monroe county,	Samuel Patton,
Montgomery county,	William S. Galey,
Morgan county,	William H. Craig,
Miami county,	A. Cole,
Marshall county,	Samuel D. Taber,
Noble county,	T. Smith,
Orange county,	Alexander Morris,
Owen county,	J. Westfield,
Parke county,	J. P. Sunderland,
Perry county,	John Elder,
Pike county,	Thomas C. Stewart,
Posey county,	Jeremiah Cash.
Putnam county,	John Thornburgh,
Porter county,	Seneca Ball,
Randolph county,	Wm. M. Way,
Ripley county,	John S. Watts,
Rush county,	Finley Bigger,
Scott county,	James V. White,
Shelby county,	Royal Mayhue,
Spencer county,	James Jones,
Switzerland county,	John F. Dufour,
St. Joseph county,	E. P. Taylor,
Sullivan county,	Abraham Snapp,
Steuben county,	Joseph Pierce,
Tippecanoe county,	Wm. M. Jenners,
Union county,	James Perry,
Vanderburgh county,	Nathan Rowley,
Vermillion county,	W. H. H. Scott,

Vigo county,	Wm. McFadden,
Warrick county,	William Smith,
Washington county,	Elijah Newland,
Wayne county,	J. R. Lampson,
Warren county,	E. F. Lucas,
White county,	W. M. Kenton,
Wabash county,	Daniel Richards,
Lake county,	M. Robinson,
De Kalb county,	Wesley Parke.

SEC. 2. That the act entitled "an act to provide for distributing so much of the surplus revenue of the United States as the state of Indiana may be entitled to receive by virtue of an act of congress," approved 23d June, 1836; approved 6th February, 1837, be, and the same is continued in force, except so much as is altered or superseded by the provisions of this act, and that the secretary of state is hereby directed to cause the same to be reprinted in the volume of the revised laws of the present session.

SEC. 3. That it shall be lawful in all cases for the agent of the surplus revenue to permit any and all borrowers of said fund who have loaned on personal security to retain the amount so borrowed by them respectively, on paying one year's interest on the same annually in advance, and giving and executing to the state of Indiana a mortgage on unincumbered real estate to secure the said loan agreeably to the provisions of the act to which this is an amendment: *Provided*, That it shall be optional with any borrower so indebted, either to avail himself of the provisions of this section or the act to which this is an amendment as he may prefer.

SEC. 4. That in all cases where loans have been made on mortgaged security, and the agent shall be satisfied that the loan so vesting upon such mortgaged security is safe, and sufficiently secured, both in view of the validity of the title and the value of the mortgaged premises, it shall be his duty to permit the borrower if he shall desire so to do, to retain the whole of such loan on his promptly paying the interest on the same for one year annually in advance.

SEC. 5. That the agent in each county is hereby empowered to employ such counsel as may be necessary to prosecute or defend any suit or suits that may be pending in relation to the surplus revenue, and pay such fees as may be agreed upon by such agent and attorney so employed.

SEC. 6. That it shall be the duty of the treasurer of state to cause printed copies of this act to be forwarded to each of the loaning agents so soon as the same shall become a law.

SEC. 7. That it shall be the duty of said loaning agents in addition to their reports to the treasurer of state, to make out quarterly, a true statement of the names of all the persons to whom loans had been made during the quarter then ending, and the amount borrowed by each, designating the loans on mortgaged and those on personal security and file the same with

the clerk of the circuit court of their proper county; *Provided*, That said agents shall also embrace on said statement, a true amount of loans refunded, and the name of the borrower who may have paid the same, and the amount refunded by each.

SEC. 8. That the interest arising from said fund that has been paid over to the school commissioners of the different counties, or that may hereafter be paid to said commissioners, if the townships in the different counties that are entitled to receive the same, do not apply and receive it according to the provisions of the act to which this is an amendment, it shall be the duty of said commissioners after said funds have been in their hands for the space of eight months, to loan the same to any resident of the county who may apply therefor, on his giving good and sufficient security for the term of one year at the rate of eight per centum per annum interest.

AN ACT to amend an act, entitled "an act to provide for distributing so much of the surplus revenue of the United States as the state of Indiana may be entitled to receive by virtue of an act of congress, approved January 23, 1836.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the treasurer of state be and he is hereby authorized to receive from the state bank of Indiana at as early a period as practicable the sum of two hundred and eighty-six thousand seven hundred and fifty-one dollars and forty-eight cents, being the amount of the fourth instalment of the surplus revenue, due this state from the United States, until the first day of January, 1839, to which day the payment of the same has been postponed by act of congress.

SEC. 2. That the treasurer of state shall on receipt thereof, pay over the said instalment amount to the commissioner of the sinking fund who shall forthwith reserve therefrom and pay to the fund commissioners of this state the net interest to be reserved in advance in loaning the same, towards the liquidation of accruing interest on internal improvement loans made by the state; and they shall proceed to loan out the same as provided in the act to which this is an amendment except that said loans shall be restricted to those counties so far as application shall be made, in which no part of the third instalment of surplus revenue has been loaned: *Provided, however*, That in case of additional branches of the state bank being organized as contemplated in said act the said fourth instalment shall be so vested in bank stock and not loaned as above said.

SEC. 3. That in case of failure by congress to provide by the said January 1, 1839, for the payment of the said fourth instalment due to this state, the fund commissioners of this state on being informed by the treasurer of state, shall issue to the state bank of Indiana in full reimbursement of the amount of said instalment so advanced, the bonds of the state for said amount, bearing six per cent interest, and in every other respect similar to the bonds by them issued on internal improvement

To be paid over to com'r of sinking fund.

Future loans, how made.

In case of failure bank to be reimbursed.

State bonds to be issued.

Bonds, how disposed of.

loans, which bonds shall also include any interest which the state bank shall have been required to pay the United States on account of the retention of said instalment, and such advance by the state bank shall not be deemed to affect or restrict the amount which the bank is authorized to discount.

SEC. 4. That in case the bonds of the state shall be delivered to the state bank, it shall be the duty of the bank to dispose of the same through the fund commissioners or otherwise as soon as the same can be done so as to reimburse the bank, and on terms consistent in the opinion of the fund commissioners with the interests of the state; and any overplus remaining after reimbursing the bank shall be paid over to the fund commissioners for the improvement fund.

This act to be in force from and after its passage.

CHAPTER XC.

AN ACT regulating trials of the right of property.

[APPROVED, FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever one or more executions shall be levied on any personal property of any person or persons; (other than the execution defendant or defendants) he, she or they, or his, her or their agent or attorney may file with any justice of the peace of the township in which such property shall have been levied on, a claim in writing, stating that such person or persons is or are the owner or owners absolutely or by mortgage or pledge (by deed or parol) of such property, specifying the items thereof and that the same is so taken in execution, which statement shall be verified by oath or affirmation appended thereto as the affiant verily believes.

Delivery bond.

SEC. 2. Said claimant or claimants, his, her or their agent or attorney, on filing such claim, or at any time before the final decision thereof, may file a bond in a penalty of double the value of the property claimed, but not to exceed double the amount (including costs) due on such execution or executions, with security approved by the justice, conditioned that such claim shall be well and truly prosecuted to effect, or in default thereof, that such property or so much thereof as may be finally decided to be subject to such execution or executions, shall be delivered to the person entitled to receive the same, in as good plight as the same can be kept by care and diligence without a demand first made.

Property to be delivered to claimant.

SEC. 3. Whenever such bond is filed as aforesaid (and not before) the property claimed shall be forthwith delivered on request, to the claimant or claimants, his, her or their agent or attorney, by the officer or person having custody of the same.

SEC. 4. On a decision in favor of such claim, or any part thereof, before the proper justice, such property or such part thereof as may be decided to be the property of the claimant or claimants, shall not be delivered as aforesaid, until the time for taking an appeal from such decision to the circuit court shall have elapsed, unless such bond shall be first executed and filed as aforesaid, conditioned for a delivery as mentioned in the second section of this act, or unless with the consent of the execution plaintiff or plaintiffs.

SEC. 5. On a breach of the condition of any of the bonds aforesaid, damages shall be recovered in a suit thereon to the value of the property failed to be delivered on injury done there-to or sustained as the case may be, and it shall be discretionary to assess not exceeding ten per centum on such value as additional damages: *Provided,* That the damage recovered shall never exceed the amount (including costs) due on such execution or executions, with ten per centum thereon interest; and in case there were two or more executions and the plaintiffs therein to whom such bond was executed, were different, on such recovery thereon, the plaintiff or plaintiffs in each execution, shall have a separate judgment for his, her or their equitable part of such damages, and execution may issue, stay be taken, or appeal had on the same, as an independent judgment.

Damages on breach of bond.

SEC. 6. On filing said claim as aforesaid, the said justice shall docket said cause for trial, making the execution plaintiff or plaintiffs the defendants, and fix a day for trial, (within five days thereafter) of which the execution plaintiff or plaintiffs, his, her or their agent or attorneys, (if in the county) and the officer holding such execution, shall have three days notice, unless the same be waived, and a speedier trial agreed to by said parties, and further proceedings on such execution or executions shall be thereupon suspended until such claim may be abated, dismissed, or a final decision thereon had.

Duty of justice before whom claim is filed.

SEC. 7. A change of venue may be granted, continuance had, new trials awarded, judgments and executions, and other proceedings had in any such cause, as in other civil causes had before justices of the peace, so far as the rules in such last named causes are applicable except as herein otherwise provided.

Change of venue &c.

SEC. 8. No cause of action in writing (other than such verified claim) shall be required to be filed in any such cause, and the execution plaintiff or plaintiffs shall have the benefit of all legal evidence in their defence without any written defence filed.

No cause of action to be filed.

SEC. 9. Such justice shall hear and try such cause, unless either party should require a jury of three, six, or twelve citizens of the county, in which case the highest number of jurors required (being one of the aforesaid numbers) possessing the qualifications of jurors in other cases before a justice, shall be summoned as in other cases to try such cause, and give a verdict, on which judgment shall be rendered as in other cases, so far as applicable.

Trial.

Verdict.

SEC. 10. Every jury of twelve in any such case before the justice, on an appeal shall in their verdict assess the value of the property claimed, and if the same do not exceed the sum of twenty dollars, the party requiring such jury shall pay the costs occasioned thereby, unless the other party shall have joined in such requisition; and if such jury shall return a verdict, and omit to return such assessed value, they shall not be allowed their fees as such; but such omission shall not vitiate their verdict.

Appeal.

SEC. 11. An appeal may be taken from the judgment of the justice in any such cause, within ten days from the rendition thereof and not after, under the same rules and provisions that obtain in other cases before justices of the peace.

Trial.

SEC. 12. Such appeal shall be tried by the court unless a jury of twelve be required under the provisions of the ninth and tenth sections of this act, and for the purpose of determining whether an appeal may be taken, or a writ of error lie on the judgment of the circuit court on such appeal whenever the jury shall omit to return the assessed value of the property claimed, or whenever the circuit court shall try such appeal, such court shall assess the value of such property.

Damages.

SEC. 13. Such circuit court shall also give judgment for five per centum in damages in favor of the execution plaintiff or plaintiffs, on the value of the property adjudged by such court as subject to such execution; and if the jury shall have omitted to assess such value, or if no jury shall have tried such cause, the court shall determine the amount of the five per centum from evidence after trial; and if the claimant or claimants shall remove such cause to the supreme court by appeal or writ of error, (which may be done, subject however to the same rules and restrictions that other civil causes originating before a justice of the peace are so removed,) the supreme court shall adjudge ten per centum damages in favor of such execution plaintiff or plaintiffs, on the value of the property which may have been adjudged by the circuit court as subject to such execution: *Provided*, such judgment be affirmed by the supreme court.

Appeal to s. c.

Partners.

SEC. 14. No claim interposed by one or more partners for their individual interest in any personal property so levied on, shall prevent the sale under execution of the undivided interest therein belonging to an execution defendant or defendants.

Judgment conclusive, &c.

SEC. 15. Any judgment contemplated by the provisions of this act, shall, while the same remains unreserved, be conclusive as to any party having had personal notice of the trial.

In cases of attachment.

SEC. 16. Personal property taken by virtue of a writ of foreign or domestic attachment may be claimed, and such further proceedings thereon shall be had as is provided by this act in cases of personal property taken in execution, and a judgment on a trial of the right of property taken in attachment while the same remains unreserved, shall be conclusive on any party having had notice as aforesaid.

Repeal.

SEC. 17. The tenth section of an act entitled "an act sub-

jecting real and personal estate to execution," approved February 4, 1831, is hereby repealed.

CHAPTER XCI.

AN ACT relating to public roads and highways.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That all public roads and highways shall be opened, amended and repaired, agreeably to the directions of this act; and the boards doing county business shall have authority to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road or part thereof in their respective counties.

County board shall order all matters in regard to roads.

SEC. 2. Applications for new roads shall be made by petition, signed by at least twelve freeholders of the township or townships in which such road is desired, (three of whom shall be of the immediate neighborhood,) specifying the proposed beginning, course and termination thereof.

Petition for new roads.

SEC. 3. Notice of each intended application shall be given by advertisement in two or more public places, in said township or townships, at least twenty days prior thereto.

Notice of application.

SEC. 4. The said board, when the petition is presented and publicly read, and upon proof of notice as above, shall appoint three disinterested freeholders of the county as viewers thereof.

Viewers to be appointed.

SEC. 5. The said viewers, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and if they deem it of public utility, lay out and mark such road on the best ground that can be obtained, not running through any person's enclosure, of one year's standing, without the owner's consent, unless a good way cannot otherwise be had.

Oath of Viewers, and their duties.

Shall not run thro' enclosure, unless, &c.

SEC. 6. The said viewers, or a majority of them, shall make and certify a copy of their proceedings to the ensuing session of the board, when the same shall be publicly read; and if no objection be made to such proposed highway, the said board shall cause a record thereof to be made, and order the said road to be opened and repaired a necessary width, not exceeding forty feet, which shall thenceforth be a public highway.

Viewers shall make return to board.

If no objection, road to be opened.

SEC. 7. If any person through whose land the said road may run, feels aggrieved thereby, such person may set forth his, her or their grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, and assign a day and place for them to meet.

Remonstrance against roads, by owners of land & review.

SEC. 8. The said freeholders, having had five days notice from either of the parties, shall meet and take an oath or affirmation, faithfully and impartially to discharge the duties as-

Oath and duty of reviewers.

signed. They shall then, or on any other day (prior to the next session) to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector or objectors will sustain from such road being opened and continued through his, her or their lands, and shall report the same to the ensuing session of the board.

Assessment of damages and report.

If report be in favor of objector, co. shall pay costs & damages. If against him he shall pay costs.

Three freeholders may object for non-utility.

SEC. 9. If the majority of said reviewers assess and report damages in favor of the objector or objectors, the costs and damages shall be paid out of the county treasury; but if the majority report unfavorably, the objector or objectors shall pay the costs; and in either case, said road shall be opened and recorded, *Provided however*, That if in the opinion of the board such damages as assessed are unreasonable they may set such view aside or order a second review if they think best.

SEC. 10. If any three freeholders, of any township or townships, through which the proposed road may run, shall object, at the time and in the manner aforesaid, to the same, as not of public utility, other viewers shall be appointed, who shall proceed as before directed.

When petitioners shall open and maintain road.

SEC. 11. If the majority of said viewers report against the utility of said road, the same shall not be established, unless the petitioners will open and maintain the same at their own expense, and in either case the petitioners shall pay the costs that shall have accrued; but if they report favorably thereto, the objectors shall pay the costs of the review, and the road ordered to be opened and recorded.

How owner of land may turn road at his expense.

SEC. 12. Any person or persons wishing to cultivate land through which any county road may run, may petition the board for permission to turn such road on his, her or their own land, or the land of any other person consenting thereto, at his, her or their expense.

Viewers to be appointed and their report.

SEC. 13. Three reviewers shall thereupon be appointed, who shall proceed to view the same, and report the respective distances and situation of the ground of the established and the proposed road.

When road is turned and opened it shall be recorded.

SEC. 14. If upon the report, the board being satisfied that the public will not be materially injured by such change, they shall order the same; and upon satisfactory assurance of said road being opened, equally convenient for travellers, the board shall vacate so much of the former road, as lies between the different points of intersection, and record said reviewer's report.

SEC. 15. Any twelve freeholders of any township or townships, may make application to the proper board by the petition signed by them, for the vacation of any road or highway, as useless, and the repairing thereof an unreasonable burthen to the township or townships.

Continuance of petition.

SEC. 16. The said petition shall be publicly read on two different days of the session at which it is presented, and the matter continued without further proceedings to the next session.

If not objected to, road to be opened.

SEC. 17. At the ensuing session, the same shall be again publicly read, and if no remonstrance be made thereto in writing, signed by twelve freeholders or householders, the board may proceed to vacate such road or any part thereof.

SEC. 18. If a remonstrance in manner aforesaid be made, the board shall appoint viewers, who shall be governed as those appointed in similar cases. The judgment of the board shall be conclusive in the premises, unless the same be appealed from, in nine months, to the circuit court of the proper county; which court is authorized to hear and determine the same, and the decision shall be final and conclusive. Remonstrance and reviewers; Judgment final unless appealed from in nine months.

SEC. 19. Any person, for his convenience, may have a cart-way, not exceeding eighteen feet in breadth, laid out from or to any plantation, dwelling house or public highway, on petitioning to the proper board, (having advertised his intentions, as required by this act,) which board shall cause the same to be publicly read, and if they think proper, order a view of the same. Cart-way, how obtained.

SEC. 20. Said cart-way shall, at the discretion of said board, be recorded and declared a common cart-way, for the use and convenience of the public, and shall be opened by the persons petitioning therefor. Cart-way may be recorded &c.

SEC. 21. If the said road shall be laid out through any person's land objecting thereto, the damages shall be assessed as provided in case of objection to public roads and highways, which being paid by the person or persons applying for such way, he may proceed to open the same agreeably to the order of the said board. If objected to, damages shall be paid, by applicant, and how.

SEC. 22. If the owner or owners of any land through which such way passes, be desirous of improving the same, he, she, or they may be permitted to turn the same, on as good ground, not increasing the distance more than one-twentieth, on application to said board. Owner of land may turn cart-way.

SEC. 23. Any person may be permitted by said board, to hang swinging gates on said cart-way, but shall keep the said gate or gates in good order and repair, under a penalty of one dollar for every offence, to be recovered before a justice of the peace of the proper county, by any person prosecuting for the same, one moiety to the prosecutor, and the other towards keeping said way in repair. Gates may be hung on cart-way, and penalty for not keeping them in order.

SEC. 24. That all male inhabitants between the ages of twenty-one and fifty years, (persons exempted by law, or by the boards doing county business excused, therefore excepted,) shall work public roads and highways, two days in each year: *Provided*, That the supervisors of the different districts in the county of Lawrence and Daviess, shall cause all persons subject to work on roads and highways, to work at least two days in each year, and as much oftener as the supervisors of such districts shall consider necessary: *Provided also*, That no tax shall be imposed on the lands of residents, in said counties, for the purpose of opening and repairing roads and highways, but in every other respect all supervisors and persons who are subject to work on roads and highways, shall be subject to and governed by the provisions of this act. Who shall work on roads and highways. Proviso as to Lawrence and Daviess.

SEC. 25. All persons, non-residents included, being the owners of any real estate, shall pay as a road tax thereon, an Non-residents shall pay road tax.

amount equal to one half of the state tax chargeable thereon; but each person may discharge the tax thus imposed, by working under the supervisor of the road district, where the real estate may be situate, at the rate of seventy-five cents per day.

Clerk shall deliver to supervisor a list of land owners &c. and tax thereon.

SEC. 26. The clerks of the circuit courts shall make out a list of the names of all persons holding real estate, whether by patent, deed, bond, or otherwise, and annex the amount of road tax charged thereon, and deliver the same to the proper supervisor, on or before the first day of June; and the said supervisor shall hand over the same to his successor.

Duplicate shall contain column for road taxes, &c.

SEC. 27. The said clerk, when he makes out the duplicate for the current year, shall enter in a separate column, the amount of the road tax assessed upon real estate, of all non-resident proprietors, the gross amount of which he shall certify to the treasurer, at the same time he certifies the amount of the public revenue.

Collector shall collect road tax by sale &c.

SEC. 28. The collectors of the state and county revenue, of the several counties, shall collect the said road tax so assessed; as county revenue is collected; and if the same be not paid, such lands shall be sold, in the manner provided for the sale of non-resident lands for state and county taxes, and pay it over, when collected, to the county treasurer: *Provided*, That said collector, shall receive in payment for such road tax, the certificate or receipt of the supervisor of the proper road district, and file the same with the said county treasurer.

Receipt of supervisor shall discharge road tax.

SEC. 29. That there shall be assessed on all town lots, in unincorporated towns, a road tax equal to one half of the amount of the county tax thereon; to be collected or worked out, in the same manner as is provided for lands owned by residents and non-residents; the labor to be bestowed to the improvement of the streets of said town.

Road tax on town lots not incorporated.

SEC. 30. Each person made liable to work, by this act, who shall fail to attend in person, or by satisfactory substitute, at the time and place appointed (within said district) with the designated tool or instrument, having had three days notice thereof, or having attended, shall spend his time in idleness, or disobey the supervisor, shall forfeit seventy-five cents for each such delinquency, to be recovered by action of debt, in the name of the supervisor, before any justice of the peace of the proper county.

Penalty for failing to work when notified three days.

SEC. 31. The said supervisor shall be accountable for the sums recovered as aforesaid, and shall expend the same in repairing the roads in his district. And in suits brought by the supervisor in pursuance of this act, he shall be a competent witness; and on any suit as aforesaid, he shall not be liable for costs.

Supervisor shall expend the money on road.

SEC. 32. When the supervisor has not an opportunity of giving personal notice of the time and place allotted for such work, a written notice thereof, left at the dwelling-house or usual place of residence of the party, shall be deemed sufficient.

Supervisor a witness against delinquent.

SEC. 33. Every person who shall at the request of the supervisor of his road district, furnish a plough or wagon, with a

Kind of notice

pair of horses or oxen and driver, and perform one or more day's work with them, shall for each day's work so performed, receive a credit of three day's work, and so in proportion for services of a similar kind, with greater or less force.

SEC. 34. The qualified voters of the several townships of the several counties of this state, shall at their township elections on the first Monday in April annually, elect as many supervisors as there are road districts in their respective townships; a return of which shall be made to the clerk as is provided in case of other township officers, and in all cases where the qualified voters shall fail to elect such supervisors, it shall be the duty of the board doing county business at their next session after the time of such election, to appoint such supervisors, to remain in office until the time of the next election.

Work with wagon, &c. how credited.

SEC. 35. To each of the supervisors elected or appointed, the board doing county business shall assign his road district together with the number of hands allotted, and cause to be forwarded to him, a certificate of his appointment, setting forth the boundaries of his district, and hands.

County board shall assign districts and hands

SEC. 36. The sheriffs of the several counties, shall deliver to the supervisors respectively, their appointments, and make return thereof to the clerk of said board, who shall enter the same on the records of said courts.

Sheriff to deliver appointment

SEC. 37. The said supervisors, before entering on their duties as such, shall take an oath or affirmation, before some person duly authorized to administer the same, faithfully and impartially to discharge the duties enjoined.

Oath of supervisor.

SEC. 38. Any householder, refusing to accept said appointment of supervisor, or to take the oath required, shall forfeit and pay the sum of six dollars, to be recovered by presentment or indictment: *Provided*, no person shall be compelled to accept said appointment, oftener than once in four years.

Penalty on householder for refusing to serve as supervisor.

SEC. 39. As often as the roads and highways within the district of a supervisor, shall require opening or repairing, he shall call out the hands allotted him, oversee and keep them close to their business, and work upon, open, clear and repair the same; and to keep them so in repair, he shall, when the hands shall have worked the number of days required by this act, if the roads require it, call out the hands assigned, in proportion to the labor and tax required of them by the twenty-fourth and twenty-fifth section of this act: *Provided*, That supervisors shall not have power to call out the hands allotted them, exceeding three times the amount of the personal and road tax provided for by the said twenty-fourth and twenty-fifth sections of this act.

Supervisor may call out hands as often as needful.

SEC. 40. If it should be necessary for any supervisor to call out the hands in his district to perform extra labor on roads and highways, as provided for in the foregoing sections of this act, and it may not be necessary to call upon all his hands, so to work, it shall be the duty of such supervisor to give such as may work a credit therefor, which shall be deducted from the amount of road labor, or tax due for the succeeding year. But

When hand called out to perform extra work to have a credit for succeeding year.

if the hands should be called out and work equally, no such credit shall be given.

Supervisor may enter adjoining lands to repair any road.

SEC. 41. It shall be lawful for any supervisor, or any person or persons by his order, to enter upon any lands adjoining, or lying near the road in his district, and cut or open such ditches or drains, and construct such dams as shall be necessary for the making or preservation of said road, doing however as little injury to the owner of such land as possible.

Penalty for injury to drains, &c.

SEC. 42. Any person who shall break down or destroy said dams, or stop or fill said ditches or drains, shall forfeit and pay five dollars for every such offence, to be recovered in the name of the said supervisor, before any justice of the peace of the proper county, and applied to the opening and repairing of roads in said district.

Supervisor may take timber, gravel &c. adjoining the road.

SEC. 43. Every supervisor shall have full power to enter upon any unimproved lands adjoining or near to the road, and gather, dig or cause to be dug, any gravel, sand or stone, or cut down any wood or trees, and carry off the same, that shall be necessary for the making or repairing of said road, doing however, as little damage as may be to the owner of such land.

Damages to be paid by county.

SEC. 44. If any person feels himself aggrieved by the removal of such timber, stone or gravel, from his, her, or their land, such person may apply to the board doing county business, who shall appoint three disinterested freeholders, who after taking the proper oath or affirmation, shall proceed to assess the damages, if any there be, which shall be paid out of the county treasury.

Guide-posts.

SEC. 45. Every supervisor shall erect and keep a post, at the forks of every road or highway within his district, containing a legible inscription, directing the way and mentioning the distance to the most remarkable place on each road respectively, under a penalty of five dollars, to be collected before any justice of the peace of the proper county, and the board doing county business shall make the supervisor a reasonable allowance for erecting such guide posts, where there shall not be a sufficiency received by him from delinquents.

Penalty for injury to guide posts.

SEC. 46. Any person who shall intentionally demolish such [post,] or deface or alter any inscription thereon, shall, for every such offence, forfeit and pay to said supervisor the sum of ten dollars, to be recovered before any justice of the peace of the proper county, for the use of the roads in said district.

Penalty for obstructing road.

SEC. 47. If any person shall obstruct any public road or cart-way, unnecessarily, and to the hindrance of passengers, such persons shall forfeit a sum not exceeding ten dollars, to be recovered as in the foregoing section, in the name of the proper supervisor.

Supervisor shall inform against those guilty.

SEC. 48. The supervisors respectively, shall as often as they are informed of such obstruction, commence suit against the person so obstructing as aforesaid, before any justice of the peace of the proper township, which suit shall be prosecuted as for debts of a similar amount.

Penalty for suffering obstruction to remain.

SEC. 49. Every person fined as aforesaid, shall forfeit one dollar, for each day he may suffer such obstruction to remain, to the hindrance of passengers, to be recovered as aforesaid.

SEC. 50. When a public road or highway shall run through, and border on any plantation, and become obstructed by the falling of trees or otherwise, it shall be the duty of the owner of such plantation to remove such obstruction, so soon as the same shall come to his knowledge; for which the supervisor of such road shall give him a reasonable compensation, by a credit on his liability to work on roads.

SEC. 51. Each supervisor shall cause all the hands in his district to work at least two days on roads in his district previous to the first day of July in each year, and also within each year to work out the amount of tax which they may be liable to pay for road purposes or collect from each person seventy-five cents for each day he may be liable to work, and failing so to do; and keep an exact account of the work done by each man; and money collected for the use of roads; and return an accurate copy thereof to the clerk of the county, on the first Monday of May after his appointment and pay to his successors all moneys collected as aforesaid not expended upon his roads, which account he shall attest under oath.

SEC. 52. If any supervisor shall fail to compel the hands of his district to work out the full time required of them by law, or pay over the money required by this act, or shall fail to keep or return an accurate account of the work done or money collected as aforesaid, or shall fail to pay over to his successor the money which may remain in his hands unexpended as aforesaid, he shall for each offence, pay not less than ten nor more than fifty dollars, to be recovered in the name of the state, before any justice of the peace (or by presentment or indictment in the circuit court) of the proper county for the use of his road district, which shall be paid by the justice or sheriff collecting the same to the successor of said supervisor, and give him therein a list of all judgments obtained by his predecessor not collected, who is hereby authorized to collect the same as if they were obtained in his own name.

SEC. 53. Each supervisor shall be authorized to purchase with moneys in his hands arising from fines collected from delinquents in his districts, ploughs, scrapers, crowbars, hammers, and other necessary implements.

SEC. 54. When any public road shall be established, or has heretofore been established on a county line, the boards doing county business in their respective counties, shall cause the same to be opened or repaired in the same manner as if the whole of said road was in the limits of the county.

SEC. 55. In all cases where the supervisors of roads shall wilfully fail or neglect to keep the roads in his district in as good repair as the available labor or other means will enable him; he shall for such failure or neglect be fined in any sum not exceeding ten dollars, to be recovered before any justice of the peace (or by presentment or indictment in the circuit court) of the proper county.

SEC. 56. That it shall be the duty of circuit courts, to give specially in charge to grand jurors the fifty-second and fifty-fifth sections of this act.

Co. board may direct supervisor to build a bridge or appoint 3 superintendents.

Oath of superintendent.

Sup. shall give notice when the contract shall be let.

Superintendent's compensation.

Undertaker shall give bond.

Individual subscriptions may be received.

Board may authorize bridge to be built as ferries are granted.

Proviso.

Road fund may be applied to erecting bridges.

Penalty for horse-racing, &c. along or across public roads.

SEC. 57. Whenever in the opinion of the board doing county business, the public convenience shall require that a bridge should be built over any water course, they shall direct the supervisors to build the same, if they deem it expedient, or they may appoint three resident persons of the proper townships as superintendents of the buildings thereof.

SEC. 58. The said superintendents shall take an oath or affirmation before some person duly authorized to administer the same, faithfully and impartially to discharge their duties; a certified copy of which shall be filed in the clerk's office of said board.

SEC. 59. The said superintendents shall advertise in the most public places in the county, the time and place they will contract with some fit person to build such bridge, which contract shall be in writing, signed by the parties contracting, and filed in the proper clerk's office.

SEC. 60. The board shall allow the said superintendents a reasonable compensation for their services.

SEC. 61. Bond and security shall be required from the undertaker of such bridge, which shall be approved by the board doing county business.

SEC. 62. The board may receive from individuals, subscriptions and donations, as contributions towards the building of such bridge, which shall be applied accordingly.

SEC. 63. If in the opinion of the board, it would be of public utility to have a bridge built across any creek or water course where money cannot be obtained by donation or taxation without oppressing the people, to build the same, they are hereby authorized to empower any individual or individuals to build the same, under the rules and regulations that ferries are established: *Provided*, the person or persons building such bridge, shall always be bound to transfer the same to the county, at ten per cent. on cost, when the board shall be willing to purchase it.

SEC. 64. The board may appropriate any money that may be available, belonging to the road funds, to the building of bridges in said county.

SEC. 65. That hereafter any person who shall be found horse racing along or across any state or county road, or other public highway or bridge within this state, or be found shooting at a mark along or across either of the above named public highways, shall upon conviction thereof before any justice of the peace, be fined in any sum not exceeding three dollars.

SEC. 66. That whenever the legislature shall appoint any commissioner or commissioners to view, mark, and locate any state road, it shall be the duty of such commissioner or commissioners, to meet at the time and place designated by the law authorizing the same, and after having been duly qualified by oath or affirmation, to faithfully and impartially discharge his or their duty or duties as such commissioner or commissioners, shall then proceed to view, mark, and locate the road for which he or they may have been appointed commissioner or commissioners as aforesaid.

SEC. 67. That in case any commissioner or commissioners who may be appointed as aforesaid, shall die, resign, or refuse to act, then it shall be the duty of the board of county commissioners or board doing county business in such county where such death, resignation, or refusal to act, shall have taken place, to appoint some suitable person or persons to fill such vacancy or vacancies occasioned by such death or deaths, resignation or resignations, refusal or refusals; and the person or persons so appointed shall in all respects be governed as herein prescribed to any commissioner or commissioners appointed by the legislature.

SEC. 68. That the commissioner or commissioners, shall receive the sum of one dollar for his or their services, for every day he or they may be necessarily employed in locating any state road, to be allowed by the board of county commissioners, or board doing county business, in proportion to the distance which the said road runs through each and every county, to be paid by the county treasuries of the respective counties out of any money in said treasuries not otherwise appropriated.

SEC. 69. That the commissioner or commissioners who may be appointed as aforesaid, is or are hereby empowered to employ a surveyor, chainmen, and markers, should he or they deem the same expedient in the location of any state road; and the surveyor, chainmen and markers shall severally receive and be paid a reasonable compensation for their respective services, to be allowed and paid in like manner.

SEC. 70. That it shall be the duty of said commissioner or commissioners, to make his or their return, or report of his or their proceedings, within thirty days after the location of any state road, and cause the same to be filed with the clerks of the several counties through which the said road shall have been located; and it shall be the duty of said clerks within twenty days thereafter to record the said report in the record book of the county commissioners, or boards doing county business.

SEC. 71. If any person through whose land any state road may run, feels aggrieved thereby, such person may set forth his, her, or their grievances by way of remonstrance to the board doing county business, and said board shall thereupon appoint three disinterested freeholders, and assign a day and place for them to meet.

SEC. 72. The freeholders so appointed having had five days notice from either of the parties, shall meet and take an oath or affirmation, faithfully and impartially to discharge the duties assigned. They shall then, on any other day (prior to the next session) to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector or objectors will sustain from such road being opened and continued through his, her or their lands, and shall report the same to the ensuing session of the board.

SEC. 73. If the majority of said reviewers assess and report damages in favor of the objector or objectors, the costs and damages shall be paid out of the county treasury; but if

Vacancy.

Compensation.

May employ a surveyor &c.

Report.

Remonstrance against roads, by owner of land review.

Oath and duty of reviewers.

Assessment of damages and report.

If report be in favor of objector county shall pay

costs and damages. If against him he shall pay costs. Individual application to county board how made.

the majority report unfavorably, the objector or objectors shall pay the costs; and in either case, said road shall be opened.

SEC. 74. That any person or persons, desiring to change any state road, passing through his, her, or their land, may, by petition, particularly describing such proposed change, apply to the board doing county business of the proper county, and the said board on application so made, shall thereupon appoint as commissioners, three competent, disinterested freeholders, who, after taking an oath agreeably to law, faithfully and impartially to discharge the duties of them required by this act, shall proceed to view the established and proposed road, and if they believe that justice and the public good will permit such alteration, they shall lay off and mark such new way, and report their proceedings in writing, under their hands and seals, to the said board of commissioners, which report shall by the clerk of said board be recorded and filed in his office; and the said new way so marked, after being opened and made in all respects equally as good and convenient for travellers, at the expense of the applicant, shall be a part of said state road, and shall be kept in repair in the same manner that other sections of said road are; and the said board, on receiving satisfactory evidence of said new road being so opened and made equally as good as the old road, shall order the old road to be vacated.

SEC. 75. That when the citizens of any county or township shall desire to change any state road, public road or highway situated in such county or township, any twelve or more freeholders of the proper township, three of whom are residents of the neighborhood in which such proposed change is contemplated to be made, or twenty-four or more householders of such county, on giving at least twenty days notice of their intended application, by setting up written advertisements particularly describing the change intended to be applied for, in three or more of the most public places in such township, in which such proposed change is contemplated to be made, may by petition particularly describing such contemplated change, apply to the board doing county business of the proper county, and the said board on application being made, shall cause the petition to be publicly read, and on being satisfied that the aforesaid notice has been properly given, shall thereupon appoint as commissioners, three competent disinterested freeholders, who or a majority of them, after taking an oath agreeably to law faithfully and impartially to discharge the duties of them required by this act, shall proceed to view the established and proposed road; and if after so viewing such established and proposed road, they find that justice and the public good require the alteration applied for, they shall lay off and mark the proposed new way, and report their proceedings in writing, under their hands and seals, to the board doing county business. who shall cause it to be publicly read, and if no objections be made, the said board shall order the said report to be recorded and filed in the clerk's office; and shall thereupon

Co. board shall appoint com'rs and their duties.

View.

Report.

Road to be opened at expense of applicant.

How changed on application of 12 or 24 householders.

Notice.

Petition, how disposed of.

Co. board shall appoint 3 com'rs and their duties.

Report.

Road how opened.

order the said new road to be opened and kept in repair in the same manner that other sections of said road are kept in repair, and shall direct the commissioners having made such review and report, to be paid for their services out of the county treasury, such compensation as the said board may deem reasonable and just; and when the said new road shall be so opened and made convenient for travellers, the said board shall order the old road to be vacated. But if the said commissioners so appointed, shall on such view of the established and proposed road, find that justice and the public good do not require the proposed change, they shall report the fact so found to the board of county commissioners, and the persons who shall have made the application for the proposed change, shall pay the commissioners, having so viewed said road, such compensation for their services, as the said board shall deem just and reasonable.

SEC. 76. When any alterations as aforesaid shall be proposed to extend from one county into another, twenty-four freeholders of either county, may file their petition, setting forth the part of the road proposed to be altered, with the clerk of the proper county, at least forty days before the term at which they make such application.

SEC. 77. The clerk of said court shall forthwith notify the clerk of the other county in which such change is desired, in writing, that such petition has been filed, and transmit him a copy thereof.

SEC. 78. The clerk receiving such information and copy, shall lay the same before the board doing county business of his county, on the first day of its next term.

SEC. 79. The said boards respectively shall appoint, on the part of each county, three disinterested freeholders as commissioners, and the board receiving the copy, shall set a time, (not under forty days) for the meeting of the respective commissioners, at the dividing line of said counties, and as near as may be to the point where the proposed road crosses.

SEC. 80. The clerk of the said last mentioned board shall forthwith give written information to the sheriff of the county where the original petition was filed, of the time and place of meeting of such commissioners. And the sheriffs of said counties shall notify, respectively, the commissioners, at least ten days before the meeting.

SEC. 81. The commissioners appointed as aforesaid, shall meet at the time and place specified, and after taking an oath or affirmation faithfully to discharge the duties assigned them, proceed to discharge the duties assigned, being governed by the requisitions of the tenth section of this act, except that the commissioners shall report to their respective boards.

SEC. 82. If the majority of said commissioners report in favor of an alteration of such road, the said boards shall cause so much of said new road as lies in each county to be recorded as a state road, and vacate the old one. And said boards shall order so much of the said alterations as lies in their respective counties

Compensation to com'rs.

Old road vacated.

Rep't against road how made.

Applicants to pay costs.

State road running into another county, how changed.

Clerk to notify of adjacent co.

Notice to be laid before c. court.

Cos. shall each appoint three com'rs.

Sheriff shall notify com'rs.

Com'rs oath & duties.

Report of the majority and confirmation.

to be opened and kept in repair in the same manner that other sections of said state road are kept in repair.

Compensat'n to
com'rs, chain-
men & markers.

Sec. 83. The commissioners aforesaid, and the chainmen and markers they may necessarily employ, shall receive such reasonable compensation as the board may allow, to be paid out of the county treasuries, if such commissioners report favorably to an alteration; but if they should report unfavorably to a change, all such expenses shall be paid by the petitioners.

State roads how
kept in repair.

Sec. 84. State roads shall be opened and repaired, and kept in repair in the same way and manner that county roads are; and any part thereof vacated in the same manner that is provided for vacating county roads.

Penalty for dri-
ving carriages,
&c. too fast over
bridges.

Sec. 85. That all drivers of wagons, carriages, sleighs, or sleds, whether of burthen or of pleasure, using any of the turnpikes or public roads, in this state, when met by another wagon, carriage, sleigh or sled, shall keep to the right, and when overtaken by a carriage, sleigh, or sled, they shall likewise keep to the right, so as in both cases to permit such carriage, sleigh or sled, either met or overtaken, to pass free and uninterrupted, and if any person shall offend against this provision, such person shall forfeit and pay the sum of two dollars to any person who shall be obstructed or hindered in his or her passage and will sue for the same, and shall be subject to an action of damages for every such offence, to be recovered with costs of suit.

Notice to vacate
state roads.

Sec. 86. All persons wishing to vacate any state or county road shall give the same notice as is required by this act for opening roads.

Relative to law
in several cos.

Sec. 87. Nothing herein contained shall be construed so as to contravene the provisions of the third, fourth, fifth, and sixth sections of "an act to change the mode of doing county business in the county of Washington, and for other purposes," approved February 6th, 1836: *Provided*, that nothing in this act contained shall be so construed as to repeal any law now in force in the counties of Lawrence, Munroe, Brown, Green and Owen, regulating the mode of opening or repairing public roads and highways therein.

5000 copies to be
printed.

Sec. 88. That the secretary of state have five thousand copies of the road law printed in pamphlet form, for the use of the different supervisors in the several counties of this state.

Repeal.

Sec. 89. All acts heretofore in force in this state on the subject of opening and repairing public roads and highways be and the same are hereby repealed.

This act to be in force from and after its publication.

CHAPTER XXII.

AN ACT in relation to the moneys arising from the leases of saline reservations, and for other purposes.

[APPROVED, FEBRUARY 1, 1834.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That all moneys now or hereafter in the state treasury, arising from leases of the saline reservations, are authorized to be loaned out from time to time, with the interest accruing thereon, by the treasurer of state, under the same rules and provisions by which the funds arising from the sales of the seminary lands in Gibson and Monroe counties are now authorized to be loaned; and that he include a correct statement of the situation and condition of said moneys in his annual report to this assembly.

SEC. 2. Said treasurer is authorized and required to loan said funds arising from the sales of the seminary lands (and from leases of saline reservations) as well as the funds which may arise from the sales of such reservations, at the greatest obtainable interest, not exceeding the highest rate allowed by law, and that the interest of said saline reservations is hereby set apart to the use of common schools.

CHAPTER XXIII.

AN ACT to establish seats of justice in new counties.

[APPROVED JANUARY 14, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any new county shall be laid off, five commissioners shall be appointed, who, at the time of discharging the duties herein enjoined, neither reside in such new county, nor hold any real estate therein. It shall be the duty of said commissioners, or any three or more of them, to convene at such time and place in such new county, as the general assembly shall appoint, and being first sworn to discharge the duties assigned them by this act, they shall proceed to fix on the most eligible and convenient place, for the permanent seat of justice of such new county, taking into view the extent thereof, the quality of the land, and the prospect of future, as well as the weight of present population, together with the probability of future divisions; and it shall be the further duty of the said commissioners to receive donations in land, from any person or persons owning lands in such county, and offering donations for the use of the same, and to fix on such place

Take bond for conveyance.

Report.

May adjourn.

Vacancy of ag't, how filled.

County com'rs may hold special sessions.

A town may be selected for the seat of justice.

Agent, how appointed and his duties.

for the seat of justice in such new county, as near as may be to that position which is likely to be central and permanent, after future divisions, as may best subserve the interest of such county. The said commissioners shall inquire and ascertain, whether any land on which they may be inclined to fix the seat of justice, can be obtained by donation or by purchase, at a reasonable price, sufficient in quantity and suitable in quality and situation, for the site of a town; and if such quantity of land cannot be obtained by donation or by purchase, at a reasonable price, then they shall fix on the next most eligible place, where such land can be procured as aforesaid; and the said commissioners shall take a bond or bonds of any person or persons proposing to give or sell any such land, payable to the board of county commissioners and their successors in office, and conditioned for the conveyance of such tract or tracts of land so given or sold, to such person as the county commissioners shall appoint as agent to receive the same; which bond or bonds the said commissioners shall deliver to the county commissioners, together with a plain and correct report of their proceedings, containing a particular description of the land so selected, which shall be considered the permanent seat of justice for such county.

SEC. 2. It shall be the duty of the commissioners, in the event of the non-attendance of a sufficient number to transact the business aforesaid, to adjourn to any other day, and give the absent commissioners notice of the day to which they have so adjourned; and the board of county commissioners, in case of death, removal or resignation of the agent as aforesaid, to appoint from time to time a successor, when and as often as may be necessary, who shall give bond as hereafter provided; and it shall be the further duty of the said board of county commissioners, when and so often as it may be necessary to carry this law into complete effect, to hold special sessions of the said board; and the county commissioners and said agent are hereby vested with all further powers necessary to carry this law into full and complete operation, according to the true intent and meaning thereof.

SEC. 3. That if in the opinion of the commissioners appointed as aforesaid, no situation can be found whereon to lay off a town for a county seat, that would be equally convenient to the citizens of the county, as to establish such county seat at some town already laid off, then said commissioners are hereby authorized to receive donations in lots, money and adjoining lands, and to establish the county seat at such town, as they shall think will be most for the interest of such county: *Provided however*, that ten per centum of such donations be reserved for the use of the county library.

SEC. 4. It shall be the duty of the board of county commissioners, forthwith after receiving the report as herein provided, to appoint some suitable person, a resident of such county, as an agent, whose duty it shall be, after giving security to be approved of by the said board of county commissioners, for the faithful discharge of the duties of his said office, to receive

good and sufficient deeds of conveyance, for any land which may have been given, for the use of the county as above provided, and to lay off the same into town lots, streets and alleys, according to such plan as the county commissioners may direct; he shall proceed also, from time to time, to sell the said lots, or so many of them as the said commissioners may deem proper and necessary, on such terms as the county commissioners may consider most advantageous to the county; and to collect all moneys arising from the sale of said lots, and pay the same into the county treasury; he shall also make conveyances to the purchasers of such lots. The moneys arising from the sale of lots as aforesaid, shall be a fund in the treasury of such county, out of which the commissioners appointed by virtue of this act, shall be first compensated for their services, and then the price of any land which may have been purchased for the use of the county, shall be paid, and the balance shall be applied, so far as necessary, in defraying the expenses of erecting the necessary public buildings, for the use of the county, and if moneys still remain, such remainder shall be applied as other moneys in the treasury.

SEC. 5. Any person or persons of whom any lands may be purchased for the use of such county, shall at the time of giving bonds for the conveyance of the same, receive of the commissioners aforesaid, a certificate of the quantity and price of the same, which certificate shall entitle such person to receive the amount of the price of such land, out of the first moneys remaining in the treasury of such county, after compensating the aforesaid commissioners, according to the provisions aforesaid. The said commissioners shall be entitled to receive each three dollars, for every day they may be necessarily employed, in performing the duties enjoined on them by this act, and in travelling to and from the place of meeting; and the agent aforesaid shall be entitled to receive for his services, such compensation as the board of county commissioners may think just and reasonable.

SEC. 6. It shall be the duty of every person appointed agent under the provisions of this act, who shall remove out of the county, for which he shall have been appointed, resign said agency, or vacate the same in any other way whatever, forthwith to deliver to his successor in said office, and in case no such successor shall have been appointed, to the board of county commissioners or treasurer of the proper county, all deeds, notes, books, or other papers appertaining to said agency, under pain of forfeiting the conditions of the bond, which he may have given for the faithful performance of the duties of his said office, taking a receipt from such successor, board of county commissioners or county treasurer, as the case may be, specifying particularly, the deeds, bonds, notes, books or other papers, and amount of money, thing or things owing to him, in his official capacity, for the use of the county; and it shall be the duty of every county treasurer, who shall receive any such deeds, bonds, notes, books or other papers, to lay the

same before the next board of commissioners to be holden in said county, who shall and they are hereby authorized to allow the said treasurer a reasonable compensation for so doing, out of any moneys in the treasury of said county, not otherwise appropriated.

Successor of agent, his duties.

Sec. 7. Every person appointed as agent, to receive any agency vacated as aforesaid, is hereby required to receive and receipt for all deeds, bonds, notes, books or other papers, in manner aforesaid, and to form all and singular the duties, obligations and other things, relative to such deeds, bonds, notes, books or other papers so put into his hands, which could have been required of his predecessor, had he continued in said office, agreeably to the true intent and meaning of this act.

Agent to settle and account.

Failing to be removed.

Sec. 8. All agents as aforesaid heretofore appointed, and those who may hereafter be appointed, shall every four months, and oftener if thereunto required, settle and account with the commissioners of their respective counties; and if any agent appointed as aforesaid, shall fail, neglect or refuse so to settle and account, or shall neglect or refuse to pay over any money which may have come to his hands, or shall neglect or refuse to do and perform any of the duties enjoined on him by law, it shall be lawful for said county commissioners to remove said agent from office, and appoint a successor, to whom the agent so removed, shall deliver all books, papers, notes, receipts, accounts, moneys, goods and effects of every description, which may be in his hands belonging to the proper county; and on his refusing so to do, it shall be lawful for the commissioners of the proper county, to proceed by action of debt or covenant, on his bond; and on recovering a judgment on said bond, against such agent and his securities, execution shall issue, and there shall be no stay thereon.

Shall pay over the same circulating medium they receive.

Sec. 9. All agents as aforesaid, shall pay over to their successors in office, the board of county commissioners, or county treasurer, as the case may be, the same description of circulating medium which they shall have collected or received, for which they shall receive receipts, specifying the kind of money paid over; and any agent who shall fail or refuse to pay over as aforesaid, when ordered so to do by the county commissioners, he shall be liable to be removed from office by said commissioners; and it shall be considered a breach of his bond, on which he may be prosecuted by action of debt or covenant, as in the preceding section is provided.

Executors &c. of agents, to deliver books and papers.

Sec. 10. If any agent appointed agreeably to the provisions herein contained, shall die before he shall have completed all the duties enjoined on him by law, and having in his possession, at the time of his death, any deeds, bonds, notes, books or other papers as aforesaid, it shall be the duty of the executor or executors, administrator or administrators as the case may be, of every such decedent, to deliver to the person legally appointed to succeed the said testator or intestate in said agency, or to the county treasurer or board of county commissioners, all deeds, bonds, notes, books or other papers as afore-

said, in the same manner and under the same rules and regulations, that are pointed out in the preceding sections.

Sec. 11. No county commissioner, county treasurer, or clerk of the circuit court, shall hereafter exercise the duties of agent as aforesaid; and every person holding the office of agent as aforesaid, who shall except of either of the said offices, shall be considered as vacating said agency, which shall be filled accordingly.

CHAPTER XCIV.

AN ACT incorporating congressional townships and providing for public schools therein.

[APPROVED FEBRUARY 17, 1838.]

Sec. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the white inhabitants of each congressional township in this state be, and they are hereby constituted a body politic and corporate, by the name and style of "the inhabitants of congressional township No. — north or south (as the case may be,) in county or counties," (as the case may be.) And in such corporate capacity they may sue and be sued, plead and be impleaded.

Sec. 2. The process against such incorporation shall be by summons, which being executed on any trustee or clerk thereof, hereinafter mentioned, the further proceedings shall be the same as against natural persons.

Sec. 3. The trustees may devise and procure a corporate seal for their congressional township, which may be altered or renewed at pleasure, until which time any of their acts or proceedings requiring it, shall be authenticated by the scroll or ink seal of their clerk, which shall have the effect of such corporate seal.

Sec. 4. It shall be the duty of the school commissioner, to appoint trustees in all congressional townships that have no school land, and in townships in which the school land will not sell for the minimum price prescribed by law; which trustees shall appoint one of their body treasurer.

Sec. 5. Such treasurer so appointed, shall take an enumeration of all the children in the organized districts, within thirty days from and after his appointment, and make report of the number in each particular district, showing which districts are organized and which are unorganized, to the school commissioner of the proper county, for which he shall receive a reasonable compensation, to be allowed by the board doing county business, and to be paid out of the school fund.

CHAPTER II. *School Commissioner.*

Com'r elected,
and for what
time.

SEC. 1. In each county in which there shall be a vacancy, at each general election there shall be elected one school commissioner, who shall hold his office for three years and until his successor is elected and qualified.

Vacancies how
filled.

SEC. 2. All vacancies in such office that may occur between the days of general election, shall be filled by appointment by the board doing county business.

Bond and oath
of commissioner

SEC. 3. Every such commissioner, whether appointed or elected, shall, before entering on the duties of his office, take an oath and give bond payable to the state of Indiana, for the use of congressional townships within his jurisdiction, in the penalty of ten thousand dollars, with at least six freehold securities to be approved by the board doing county business of his county, conditioned for the faithful discharge of the duties of his office, and for delivering over to his successor all moneys, [papers,] and books that may come to his hands as such commissioner.

His office, where
held.

SEC. 4. It shall be his duty to hold his office at least one day in each month, at the county seat, which days shall be so distributed as to include one day of the circuit court, said commissioner giving notice of such days together with the place of his office, in some public newspaper printed in the county; and if no paper be printed in the county, then by three written advertisements put up in each township.

SEC. 5. At all other times he shall keep his office either at the county seat or at his dwelling house in the county.

May transact
business by de-
puty.

SEC. 6. He may transact his business by deputy, to be appointed and removed at pleasure, he and his securities being responsible for the acts of said deputy.

Com'r may be
removed, for
what cause.

SEC. 7. Such commissioner may be removed from office by the board doing county business of his county, upon failure to give additional security as such board may at any time require, or upon conviction by indictment for any mal-conduct in office, or on account of incapacity to discharge its duties, but such commissioner shall have ten days notice, and an opportunity to be heard by counsel and witnesses in defence of any accusation.

Jurisdiction
where school
lands lie in dif-
ferent town-
ships.

SEC. 8. Whenever any township shall have lands belonging thereto for the use of schools, and not situate therein, the school commissioner of the county in which such township lies, shall have jurisdiction over said land; or [if] such township lies in two counties, the school commissioner chosen by the trustees shall have jurisdiction over said land.

Trustees shall
decide to which
it belongs.

SEC. 9. Where any congressional township owning school lands, or where the sixteenth section or fractional part thereof belonging to any congressional township lies in two or more counties, the trustees of such township shall decide which school commissioner of such counties shall have jurisdiction over the school lands thereunto belonging.

SEC. 10. The jurisdiction herein given to the school commissioner over the school lands not situate in his county, shall give him and the trustees and inhabitants of the congressional township to which the same belongs, the same power and authority over such lands, and subject him and them to the same duties, and such lands to the provisions of the law as though the school lands were situate in such township or county.

SEC. 11. Such commissioner shall keep a separate account of the funds belonging to each congressional township within his jurisdiction, and of his transactions in relation to the same; and in keeping such account he shall distinguish such sums as are received as principal and such as are interest.

SEC. 12. The school commissioner shall make a calculation of the interest in his hands which shall have accrued on the school moneys as well as all other moneys liable to be drawn for school purposes, in his care, on the first Mondays of March and September of every year, which he shall thereafter pay over when applied for as herein directed.

SEC. 13. It shall be the duty of the several school commissioners, each year, the May term of the board doing county business, to make a detailed report to the board of all moneys that he has received and disbursed, and for what objects received, and to whom paid over, which report shall be recorded in the records of the board.

SEC. 14. It shall be the duty of the school commissioner to purchase a sufficient number of bound blank books to furnish the proper officers of each township; in which a fair record of all proceedings shall be kept.

SEC. 15. The books, papers, and accounts of any school commissioner shall be subject to the inspection of the board doing county business of such commissioner's county, three days' notice thereof being given by process issued by the clerk of such board, on the petition of five freeholders or householders of the county.

SEC. 16. No person holding any other office of trust or profit, shall be eligible to the office of school commissioner.

CHAPTER III. *Election and appointment of Township Trustees and their duties.*

SEC. 1. There shall be an election the last Saturday of every August, as near the centre of each congressional township as is convenient.

SEC. 2. The school commissioner for the first such election, and the township trustees for each subsequent one, shall cause written notices to be posted up in three of the most public places in the township at least twenty days previous to the same, specifying the object and place thereof.

SEC. 3. Such commissioner or trustees shall, at the same time, appoint an inspector of such election, enter the same record, and in due time forward to him a certified copy of such appointment.

On failure of inspector to attend voters may appoint.

SEC. 4. On failure of the appointment of such inspector or of his attendance as soon as two o'clock, P. M., on the day of such election, or of his being qualified and acting as such; then a majority of the voters present shall appoint an inspector in his place.

Mode of conducting election.

SEC. 5. The time and manner of opening, conducting and closing said election, the mode of appointing the judges and clerks thereof, and the several liabilities appertaining to them and the voters separately and collectively, shall be the same as are prescribed in an act entitled "an act to regulate general elections," approved January, 1831, subject to the provisions of this act, so far as the same are applicable, but no election shall be considered illegal that is opened as soon as two o'clock, P. M. of the day, in consequence of not being opened sooner.

Qualification of trustee.

SEC. 6. No person shall hold the office of township trustee unless he be a resident householder or a resident freeholder of the township, a citizen of the United States, and shall also have been a resident of the state for the space of one year next preceding the election.

Term of service of trustees.

SEC. 7. At the first election held in each township there shall be three trustees elected. The person having the highest number of votes shall serve three years, the person having the next highest number shall serve two years, and the person having the next highest shall serve one year as such trustee respectively.

Mode of determining when 2 persons receive the same No. of votes.

SEC. 8. If the highest or second highest number of votes be given to two or more persons, their term of service shall be determined by lot on the day of such election, by the judges

Shall determine by lot.

SEC. 9. If the highest and next highest number of votes be given each to two or more persons, then the term of service of the highest in number and the election of the next highest in number shall be determined by lot as aforesaid.

SEC. 10. If the third highest number of votes be given to two or more persons, then the election shall be determined by lot as aforesaid.

Judges & cl'ks shall certify &c.

SEC. 11. The judges and clerks of such election shall, within seven days thereafter, certify to the school commissioner under their hands, the number of votes given at such election, for each person as trustee, together with the determination by lot as aforesaid (if made), and also deliver to him the list of voters and the tally papers.

Com'r shall give certificate to person elected.

SEC. 12. Such commissioner shall enter every such certificate in his record book, and shall thereupon give a certificate of election to each person entitled to receive the same, specifying the term of service of each holder thereof.

One trustee elected annually.

SEC. 13. There shall be annually elected in each township one trustee to serve three years, and also one or more trustees to fill the vacancy that may have occurred.

Com'r shall fill vacancies.

SEC. 14. The school commissioner shall fill all vacancies in the office of township trustee that may occur between the annual elections, by appointing persons of like qualifications, which appointment shall, by the commissioner, be entered of

record and a certified copy of it given to the person so appointed.

SEC. 15. The school commissioner on the request of any three persons of his county, shall appoint three trustees for any township which may never have elected trustees, to serve until the last Saturday in August then next ensuing, and until his successor is duly elected and qualified.

Com'r shall appoint trustees.

SEC. 16. Should there be no commissioner, then the board doing county business shall make such appointment.

Board of com'r shall appoint com.

SEC. 17. When any of the township trustees shall fail or neglect to act or discharge any of the duties of their office as such, the school commissioner or officer acting as such, may remove such delinquent trustee, and fill such vacancy by appointment of some other suitable person who shall act until his successor shall be qualified according to the provisions of this act.

Com. shall appoint when trustees fail to serve.

SEC. 18. Should the township be situate in two or more counties, the board of either may make such appointment, the first appointment having the preference.

SEC. 19. The trustees in the last three sections mentioned shall be removable, and their vacancies filled at pleasure by the power which appointed them.

Trustees removable.

SEC. 20. Each township trustee shall, before entering upon the duties of his office, take an oath that he will faithfully discharge the duties of his said office, to be administered by the school commissioner or some justice of the peace.

Trustees shall take oath.

SEC. 21. Each trustee shall serve for the time for which he was elected or appointed, and until his successor shall be qualified.

Term of service.

SEC. 22. Said trustees shall annually appoint one of their number as clerk, who shall ex-officio act as president of their board, and any vacancy in his office shall be filled by said trustees from their own body.

Cl'k appointed.

SEC. 23. Said clerk shall, at the instance of either of his co-trustees, or as often as in his opinion their duties may require, convene such board, after notice to them first given, at such time and place as is convenient, and shall sign their recorded proceedings at each meeting and keep a fair and true copy of the same.

Cl'k convene the board.

SEC. 24. They shall without delay divide their township into school districts, each of such size and limits as will be most convenient for the use of all its inhabitants.

Shall divide the township.

SEC. 25. They may on the petition of a majority of the voters of any district, sub-divide or change the size or limits of the same as convenience may require. And the trustees of any two or more adjacent townships, may if convenience shall require it, form a district out of parts of each of such townships. And the treasurer of such district shall draw from the township treasury of each township, of which the district is formed, a due proportion according to the number of children resident in each part of said district in conformity to this act. And the trustees of each township out of which a district is so formed shall describe and record the part of their township making part of a district in the books of their township clerk.

May subdivide.

Districts to be recorded.

Sec. 26. An accurate description of each school district regularly numbered shall be recorded by the clerk of the trustees in his book.

Books subject to inspection.

Sec. 27. The books, papers, and accounts of any township trustee, or board of trustees, shall be subject to the inspection of the board doing county business in the county in which the commissioner having jurisdiction over the township resides, three days notice thereof having been given by process [issued] by the clerk of said board, on the petition of five freeholders or householders of the township.

CHAPTER IV. Township Treasurer.

Township treasurer.

Sec. 1. The township trustees shall annually appoint one of their body as treasurer of their township, in whose hands shall be placed from time to time, all rents, issues, profits, interests, debts, and damages belonging to such township, except as is otherwise herein provided.

Sec. 2. Any vacancy occurring in the office of treasurer shall be filled by the trustees from their own body.

Shall give bond.

Sec. 3. Every treasurer before entering into the duties of his office shall give bond payable to the state of Indiana, with freehold securities to the acceptance of the commissioner, in such penalty as he may require, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor of all moneys, papers, books, and property in his hands as such treasurer.

May be removed.

Sec. 4. Such treasurer shall be liable to removal from office by the commissioner upon failing to give such reasonable security as he may from time to time require, or upon conviction by indictment for misconduct in office.

Shall report.

Sec. 5. Each township treasurer shall annually, on the first day of the May term of the board doing county business, report to the board the amount of school funds and property under his care, with a statement of the notes, accounts, debts and credits of such township, the name of each lessee of land belonging to the inhabitants of said township; the amounts of rent when, and in what way payable, the current expenditures of said township, and the funds of said township in the hands of the school commissioner of the county, the amount of interest received from the commissioner, and the amount received by virtue of "an act to provide a fund to encourage common schools," and an act in furtherance of said act, and a statement of the amount by him paid over, and to whom.

Punishment for neglect of duty.

Sec. 6. Each township treasurer failing to perform the duties and requisitions contained in the last preceding section, shall, on conviction thereof by indictment, be fined in any sum not exceeding one hundred dollars, and shall moreover be liable on his bond or otherwise to the inhabitants of his school township for all damages occasioned by such failure.

Treasurer shall make dividend.

Sec. 7. It shall be the duty of the township treasurer each year, to make a dividend and distribution of the school funds

in his hands, on the second Mondays of March and September, which dividend shall be made to each school district in due proportion to the number of persons in each between five and twenty-one years of age: *Provided however*, that any organized district having twenty persons therein, between five and twenty-one years of age, and failing to keep a school therein for at least three months of any year, counting from the second Monday of March to the second Monday of March following, such district shall have the amount drawn for such year, deducted from the next dividends to which it would be entitled.

Sec. 8. The books, papers, and accounts of any township treasurer, shall be subject to the inspection of the board doing county business of the county in which the commissioner having jurisdiction over the township in which he resides, three days notice thereof being given, by process issued by the clerk of said board, on the petition of five freeholders or householders of the township.

CHAPTER V. Election, appointment, and duty of District Trustees.

Sec. 1. The qualified voters of each district, shall, on the first Saturday of October, annually, elect three district trustees thereof.

Sec. 2. Ten days previous to the first election in any district, the township trustees shall post up at some public place in the district, written notice of the election: and the district trustees shall post up like notice for each subsequent election.

Sec. 3. The voters at such election shall appoint their own inspector.

Sec. 4. The election for district trustees shall be subject to the same provisions to which an election for the township trustees is subject, except that the result of the election shall be certified to the township trustees.

Sec. 5. The judges and clerks shall, within seven days certify to the clerk of the township trustees, the number of votes given for each person, together also, with the determination by lot, if any, and also deliver to him a list of the votes and tally papers.

Sec. 6. Said township clerk shall enter every such certificate in his record book, and shall thereupon give certificate of election to each person entitled to receive the same.

Sec. 7. Each district trustee shall serve for one year and until his successor is qualified, and shall take an oath of office, which may be administered by the clerk of the trustees.

Sec. 8. No person shall be elected or appointed a district trustee unless he be a citizen of the United States, reside in the district, and shall have resided in the state one year next preceding his election.

Sec. 9. Vacancies in the office of the district trustees shall be filled by the clerks of the township trustees, and trustees so appointed, shall serve until the next election.

Sec. 10. They shall appoint one of their own body as clerk, who shall keep a record of their proceedings.

Shall call district meeting.

SEC. 11. They shall when requested by five voters of the district, call a meeting of the voters as near the centre of the district as is convenient, of which ten days previous notice in writing shall be posted up in some public place in the district, unless in case of emergency, when personal notice shall be given to each voter. They may also in their own discretion call meetings giving like notice.

Clerk shall preside.

SEC. 12. The district clerk, or in his absence one of his fellow district trustees shall preside at such meeting, and take the vote viva voce by ayes and noes, or by count on such questions as any voter may propose, touching the building, or adopting a school house, procuring a site therefor, the materials, dimensions, and workmanship of such house, its location, the support of a public school for a term not less than three months in each year, the employment of a teacher, and other things pertinent to the objects and welfare of a common school.

School house, how built.

SEC. 13. If a majority present are in favor of supporting a school, or of building or adopting a school house, the district clerk shall copy their decision on those points from the proceedings by him entered in his book, and deliver the same to the township clerk who shall enter the same of record.

SEC. 14. The district trustees shall make the contracts and give such personal attendance as may be necessary to carry into effect the vote of such meeting.

Trustee shall keep a record.

SEC. 15. The district trustees shall keep a list entered of record of the names of all the inhabitants of the district, entitled to vote at the meetings thereof, with the quantity of land held by each, with the number of children in each family between five and twenty-one years of age; which lists shall be corrected from time to time, and a copy thereof sent to the township treasurer prior to the second Monday in March annually: *Provided*, that it shall not be lawful, in making such enumeration, to take any account of the children or lands of such as will not participate in the school funds according to law; upon which list the township treasurer shall make the dividends provided for in the seventh section of the fourth chapter of this act: *Provided however*, that it shall and may be lawful for the district trustees in making such enumeration to take the number of children of all persons who do not relinquish in writing to the inhabitants of such districts their interest in the school funds on condition that they pay no tax for the purpose of building district school houses to enable them to draw their proportion of the school funds.

SEC. 16. The township clerk shall give a certified copy of the names of the voters on such list, to any person asking the same, on the tender to him of twelve and a half cents.

Qualification of voters.

SEC. 17. No person shall give a vote at a district or township meeting unless he possess the qualifications of a voter at the general elections.

Who may call a meeting.

SEC. 18. Any five voters who are householders or freeholders may call a meeting by posting up, ten days previous thereto, advertisements signed by their names.

Vacancies, how filled.

SEC. 19. All or any of the district trustee shall be removable from office, by a majority of the householders and free-

holders, who are voters of the district, at any of their meetings, and any vacancy or vacancies thereby occasioned, shall be filled at the same meeting by a majority of the votes.

SEC. 20. The clerk of the township trustees shall appoint three district trustees in any district in which no district trustees have been elected, who shall hold their offices until their successors are qualified.

SEC. 21. The books, papers and accounts of any district trustee or board of district trustees shall be subject to the inspection of the board doing county business of the county in which the commissioner having jurisdiction over the district resides, three days notice thereof being given by process issued by the clerk of such board on the petition of five freeholders or householders of the district. Books subject to inspection.

CHAPTER VI. District Treasurer.

SEC. 1. The district trustees shall annually appoint one of their body as district treasurer, who shall serve until the expiration of his office as district trustee and until his successor is qualified. District treasurer.

SEC. 2. Vacancies in the office of district treasurer shall be filled by the district trustees from their own body, subject to the above provisions.

SEC. 3. The district treasurer shall give bond payable to the state of Indiana, with penalty and security to be approved by the township clerk, conditioned for the faithful discharge of the duties of his office, and for delivering over to his successor at the close of his term of office, all moneys, property, books and papers in his hands as such treasurer. Shall give bond.

SEC. 4. He shall also take an oath faithfully to discharge the duties of his office, which oath may be administered by the clerk of the township trustees or by a justice of the peace. Shall take an oath.

SEC. 5. The bond aforesaid shall be filed away and safely kept by the township clerk who shall record the same in his book, a copy of which certified, shall be prima facie evidence of the original without its production, and suit may be brought on such bond or copy for the use of the district for school purposes, for any breach of the same. Bond to be filed.

SEC. 6. The district treasurer shall demand, receive and safely keep the moneys and personal property belonging to his district and appropriate the same as required by law, keeping a regular account of all receipts and expenditures. Treasurer's duty.

SEC. 7. The books, papers and accounts of any district treasurer shall be subject to the inspection of the board doing county business of the county in which the commissioner having jurisdiction over the district resides; and it shall be his duty to make semi-annual statements of the condition of the school funds in his hands to the school commissioner of the county of which he is resident. Books subject to inspection.

CHAPTER VII. Leasing School Lands.

SEC. 1. The township trustees shall have power to lease any school lands belonging to their congressional township. Leasing school lands.

for any term not exceeding three years, payable in money or property, or improvements to be made thereon; or for the shortest time possible not exceeding ten years.

Sec. 2. During the existence of any such lease, such trustees shall have and exercise all the rights and privileges of landlords in coercing the fulfilment of contracts and preventing waste or damage to the lands leased, either in their official names or the corporate name of the township.

Treasurer shall receive rents.

Sec. 3. The trustees shall receive all moneys accruing to their township from leases or otherwise, and shall preserve all personal property and rents in kind belonging or accruing to said township, from lease or otherwise, and may sell such property from time to time in such manner as will best promote the interest of their township.

CHAPTER VIII. Sale of Congressional School Lands.

Lands may be sold.

Election.

Lands may be sold on petition of a majority of the township.

Sec. 1. On the written petition of at least five qualified voters who are inhabitants of any congressional township to which any unsold lands for the use of schools may then belong, the school commissioner having jurisdiction over such township, or the trustees thereof (as the case may be) shall insert in the notices of the election for a trustee or trustees to be held on the last Saturday of August next following, the additional notice that a balloting will then be had to determine the question whether the said lands shall be sold or not: *Provided*, That in all cases where the citizens of any congressional township shall fail to decide in favor of a sale at any election which may have been held for that purpose, it shall be lawful for the trustees of such township upon the application by petition of a majority of all the legal voters of any such township, to direct the school commissioner to sell the said school section agreeably to the provisions of this act.

Sec. 2. On like application to the school commissioner or township trustees (as the case may be,) he or they may on giving like notice, order an election on any day of the year, Sundays excepted, to determine whether said lands shall be sold or not.

Sec. 3. The commissioner or trustees, (as the case may be,) shall enter in his or their book the fact that such petition was presented, with the object thereof, and the time of presentation.

Mode of voting.

Sec. 4. Each voter favoring the sale of such land, shall write on the ballot used by him in voting for a trustee or trustees, or for a sale, the word "sale," and if opposing to it, "no sale."

No sale unless 15 voters concur.

Sec. 5. There shall be no sale of the congressional school lands in any township unless there are fifteen qualified voters resident therein, nor unless a majority of the voters of the township vote in favor of such sale.

Sec. 6. If a majority vote in favor of a sale, the judges and clerks of the election shall within seven days thereafter file a

certificate thereof with the school commissioner, in which shall be included the number of votes for and against said sale.

Sec. 7. The trustees of such township shall thereupon divide the lands so voted to be sold, into such lots as will best suit purchasers and insure the best price, fixing a minimum price to each lot, not less than one dollar and twenty-five cents per acre, below which it shall not be sold.

Sec. 8. The clerk of said trustees shall forthwith certify such appraisal of lots and also such divisions (if made) to the commissioner who shall record the same at length in his books.

Sec. 9. The commissioner shall thereupon proceed to sell such lots separately at public auction to the highest bidder, as hereinafter provided.

Sec. 10. The township trustees are authorized with the consent of the lessee or person deriving title from him, to cancel or annul any unexpired lease, which avoidance shall be evidenced in writing, under the hands of such trustees and lessee, or person deriving title from him as aforesaid.

Sec. 11. Such avoidance shall be filed away and kept by the school commissioner and recorded in his book, an attested copy of which record shall be prima facie evidence of the contents of such avoidance.

Sec. 12. Any school lands subject to an unexpired lease, may be sold, if under the provisions of this act it be so voted but subject to such lease, the full benefit of which shall enure to the purchaser, his or her representatives, or assigns, and the same may be enforced in his or their names.

Sec. 13. The commissioner at least sixty days before the sale by him of any school lands, shall post up notices thereof in three of the most public places in the township where the land is situated, at the court house door, and such other places as he may deem proper, and advertise the same in the nearest public newspaper thereto.

Sec. 14. Such sale shall be held at the court house of the county in which the lands are situate, between the hours of 10 o'clock A. M. and 6 o'clock P. M., and may be adjourned from day to day till the same is completed.

Sec. 15. Where school lands have been offered for sale under this act, and remain unsold, the commissioner is required to sell the same at private sale for the best price that can be had for the same, not less than the minimum price thereof so fixed by the trustees.

Sec. 16. The commissioner shall record every such sale in his book, setting forth the tract sold, when, to whom, and for what amount, and deliver a certified copy thereof under his hand, to the recorder of his county within five days thereafter, who shall record the same and certify a copy thereof to the board doing county business of said county.

Sec. 17. Every purchaser at such sale shall pay to the commissioner at the time thereof, one-fourth of the principal, and legal interest on the residue for one year in advance, and

the residue in ten years after such sale, with legal interest in advance.

Land to forfeit on failure to pay interest.

SEC. 18. Upon a failure to pay such interest or the residue of such principal within sixty days after the same becomes due, the rate of interest from the expiration of the said sixty days shall be one hundred per cent. per annum, until paid; but upon failure to pay it within six months after it is due, the land, together with any and all previous payments made thereon and the contract of sale therefor shall be forfeited with the restrictions and limitations hereinafter expressed to the congressional township to which the same belongs; and the commissioner upon such forfeiture shall forthwith proceed to re-sell the lands; such second sale being subject to the same legal regulations as the first; but if the commissioner by virtue of such second sale shall receive, taken together with the payments which have been made by the first purchaser, more than the full amount of principal, interest, and costs, to which the township and its officers were entitled by virtue of the first sale, together with all incidental expenses, and the per centage for failure of payments as above provided, it shall be the duty of the commissioner to hold such residue for the use of, and payable to the order of the first purchaser or his legal representatives: *Provided however*, if the purchaser, or his legal representatives shall before the sale of any land, by reason of said forfeiture, pay all interest and principal that is then due, together with all penalties, per centum and costs, such purchaser or his representatives shall have the benefit of the original time of credit, the same as though no default had been made.

Proviso.

Purchaser liable for damages when lands forfeit.

SEC. 19. If any person shall forfeit any lands as aforesaid, purchased under the provisions of this act, he shall be liable for any damages he may have committed thereon by the unnecessary waste or injury of timber, or otherwise to be sued for and recovered in the corporate name of the congressional township to which the same belongs.

Com'r shall give purchaser certificate.

SEC. 20. Such commissioner, on receiving the first payment for lands sold under any of the above provisions, shall give the purchaser a certificate of such sale.

Purchaser failing to comply his liability.

SEC. 21. Any person bidding off any tract of land at any such sale, and failing at the time to make the first payment as above required, shall be liable to pay ten per centum on the sum so bid, to be recovered by said commissioner in an action of debt, before any justice of the peace, or in the circuit court having jurisdiction in the corporate name of the township owning such land; and such commissioner, his deputy or agent shall be competent witnesses in such action.

Right of possession.

SEC. 22. Every purchaser holding a certificate of sale as aforesaid, shall have the right of possession of the land therein named, unless he shall forfeit the same as aforesaid, or the same be held by a prior unexpired lease, the lessee not consenting thereto.

Com'r make a deed.

SEC. 23. Upon full payment of principal and interest for any tract of school land as herein required, the commissioner shall execute a deed of conveyance therefor to the purchaser,

his heirs or assigns, in the corporate name of the congressional township to which the same belongs.

SEC. 24. Should such purchase money be paid before the same is due with all interest then due thereon, such deed may be required forthwith, but no discount shall be made for prompt payment. When purchase money paid before due.

SEC. 25. Such deed when executed, shall vest in the purchaser or his assignee, as the case may be, his heirs and assigns forever, all the right, title, and interest of the inhabitants of the township to such land. Deed.

SEC. 26. Such deed shall be acknowledged as in other cases by such commissioner at the cost of the grantee. Shall be acknowledged.

SEC. 27. No assignment of any such certificate shall be recognized by such commissioner, unless the same be acknowledged before him or some other officer of this state duly authorized by law to take acknowledgements. Certificate acknowledged when assigned.

SEC. 28. Purchasers of school lands shall have the privilege of making payment of one-fourth, one-half, three-fourths, or all of said purchase money at the time of any annual payment for the same, and each purchaser shall be entitled to a receipt therefor from the proper school commissioner, and in such case said purchaser shall only be liable for the residue of the principal and interest upon the same when due. Purchasers may pay all or part at time of purchase.

CHAPTER IX. Commissioner depositing money in the Loan Office.

SEC. 1. When the school section of their congressional township, or a part thereof has been sold, the township trustees shall call a meeting of the qualified voters of said township to determine by vote, the question whether the moneys arising from their school lands or from donation, shall be deposited in the loan office or be loaned by the school commissioner. Voters determine how money may be disposed of.

SEC. 2. They shall give two weeks notice by written advertisements, put up in three of the most public places in the township, of the time and place of such meeting and election, which shall be in some public and convenient place in the township. Notice of meeting.

SEC. 3. The clerk of the trustees shall act as the inspector of the votes at any meeting held by the qualified voters of their congressional township, not otherwise provided for by this law. Inspector.

SEC. 4. Such election and all other elections contemplated by this act, and not herein otherwise specially provided for, shall as near as is convenient, be conducted in conformity to the law regulating general elections. Election how conducted.

SEC. 5. Each voter at such meeting, wishing said moneys deposited in the loan office, shall write on his ballot "loan office" or other words expressive of such wish; and each voter wishing said moneys to be retained and loaned by the school commissioner, shall write on his ticket "commissioner" or words to that effect. Ballots.

SEC. 6. The number of votes so given on both sides, shall be recorded. Votes recorded.

be recorded in the books of the trustees of such township by their clerk.

Certificate of result of. SEC. 7. If a majority of the voters of any township decide in favor of placing said moneys in the loan office, a certificate of the same shall be made by the judges of such meeting under their signatures, and be forwarded by them to the commissioner without delay.

Certificate recorded. SEC. 8. The commissioner shall record said certificate in his book and retain the original on file in his office.

Com'r shall deposit money. SEC. 9. The commissioner on the receipt of said certificate, shall as soon as practicable, deposit such school funds in the loan office, and take from the superintendent of the loan office, a receipt specifying the amount deposited and the township from which the same was received.

Clerk record certificate. SEC. 10. The commissioner shall copy said receipt in his book and file the same in his office, and also forward a certified copy thereof to the clerk of the trustees of the proper township, who shall record the same in his book and keep the original on file in his office.

Money deposited in loan office. SEC. 11. Money so deposited in the loan office, shall there remain a permanent fund for the purposes of school education for each township to which it belongs and shall yield a legal interest not less than at the rate of six per centum per annum.

Faith of the state pledged. SEC. 12. That the faith of the state is hereby solemnly pledged to the inhabitants of each of said townships for the preservation of said funds, belonging thereto, and for the payment of the annual interest.

Com'r shall pay over interest. SEC. 13. That the superintendent of the loan office shall calculate the interest which shall have accrued on the moneys of each township on the second Monday of January in each year, which he shall pay over thereafter, when applied to for that purpose.

CHAPTER X. *Loaning School Moneys.*

Com'r shall loan money. SEC. 1. If the commissioner shall not be notified to deposit the school fund of any township in the loan office, he shall after the time of the election provided for by the ninth chapter of this act, loan the same as fast as it shall come to his hands, at an interest of not less than six per cent. per annum payable in advance, and for a term not less than one, nor more than three years: *Provided*, that it shall be lawful for the commissioner to keep any congressional money in his hands ten days after the time provided for such election, and in cases where no such election is required, ten days after it comes to his hands, unless he can sooner loan it on good security for ten per centum interest.

Citizens of township shall have preference. SEC. 2. In loaning said moneys preference shall be given to applicants who are citizens and freeholders of the township to which the same belongs, if applied for within five days after the receipt of the same by the commissioner.

Money loaned, how secured. SEC. 3. To entitle any person to the loan of school funds, such applicant shall file with the commissioner the certificate

of the recorder of the county in which the lands proposed to be mortgaged on such loan are situate, shewing that the unincumbered chain of title to such lands on record in his office is regularly derived from the United States, and that there is no mortgage, lien or claim on such lands of record in his office against such applicant, which shall be accompanied by affidavit of the applicant, to be administered by said commissioner, that said land is free and unincumbered, and that the legal and equitable title thereof is in him.

Chain of title certified. SEC. 4. *Provided however*, that if said applicant have only the final certificate and no patent has been issued thereon, the affidavit of the applicant, made before and filed with the commissioner, together with the final certificate, shall authorize a loan on mortgage, the same as though the patent was issued and recorded in the recorder's office of the county: *Provided also*, that if the patent be issued by the government and is not in possession of the applicant for the loan, his affidavit that there is a patent granted to a particular person, shall be sufficient evidence of the fact.

Lands apprais'd. SEC. 5. Said borrower may have said land appraised by the trustees of the congressional township where the interest of dower or tenancy by courtesy.

Am't to be loaned to each person. SEC. 6. The commissioner shall thereupon on taking a mortgage, as hereinafter expressed, loan to such applicant or joint concern, any sum not exceeding three hundred dollars, and not exceeding half such appraised value of said land. But if the borrower does not procure the land to be appraised, then the commissioner shall loan on unimproved tracts, not exceeding seventy-five cents on each acre mortgaged, and on tracts one-sixth part of which is improved, not exceeding one dollar and twenty-five cents for each acre mortgaged.

SEC. 7. The funds so loaned on any mortgage shall belong to but one congressional township.

Certificate, &c. to be filed. SEC. 8. Every such appraisal, certificate of a clerk or recorder and affidavit shall be, by such commissioner, carefully filed away and kept in his office.

Mortgage to be executed. SEC. 9. Prior to loaning any such money, the applicant shall execute duplicate mortgages, which may be acknowledged before the commissioner.

Mortgages filed. SEC. 10. One of the duplicate mortgages shall be filed and recorded in the recorder's office of the proper county, and the other retained and filed by said commissioner, and either of them shall be original evidence of the contents thereof.

Com'r to decide between applicants. SEC. 11. Where there are more applicants than one for the said money, the commissioner shall loan it to either at his discretion, upon the best terms of security offered.

Interest retain'd. SEC. 12. When such commissioner shall loan money under the provisions of this act, he shall retain one year's interest out of the loan, at the highest lawful rate per centum which can be procured not less than six.

SEC. 13. There shall also be retained out of said loan, by such commissioner, the fees annexed to such of the following services as may be required in perfecting such loan, under the provisions of this act, that is to say:

Fees.

To each trustee for the appraisalment of any land attempted to be mortgaged, - - -	\$0 25
For recording any such mortgage, - - -	25
For entering satisfaction of record of the same, - - -	12½
For writing the duplicate mortgages, - - -	50
For taking the borrower's affidavit, - - -	12½

Money retained, com'r may be indicted.

Sec. 14. If any commissioner shall retain school money in his hands (a longer time than allowed by this act,) when the same could have been loaned on good security, he shall upon conviction thereof by presentment or indictment, be fined in any sum not exceeding five hundred dollars; and on such conviction there shall be a judgment of deprivation of office.

Interest on surplus rev. may be loaned.

Sec. 15. It shall be the duty of the school commissioners in the several counties in this state to loan the moneys annually coming into their hands by virtue of the provisions of an act entitled "an act for the distribution of so much of the surplus revenue of the United States as the state of Indiana may be entitled to, and receive by virtue of an act of congress of the 23d June, 1836," approved February 6th, 1837, in the same manner as they are now required to loan any other school funds by the provisions of this act, and they are hereby empowered to exercise any power or authority necessary to enable them to loan out said moneys which they can now exercise under this act for loaning other school funds.

CHAPTER XI. *Sales by Mortgage.*

Sec. 1. If default be made in payment of any interest on any loan hereby authorized, for the space of six months, after the same is due, such default shall be a failure of further credit on said loan; and all the principal and interest, thereon shall be due and payable instantan.

Sec. 2. On such forfeiture the commissioner shall forthwith proceed to sell for ready money, the fee simple of the premises mortgaged in security therefor: giving at least twenty days' notice of the time and place of sale, by posting up written advertisements thereof in three of the most public places in the township in which such land may be situate; and also by advertising the same for three weeks successively in the newspaper printed and published nearest the said land, if any be printed in his county: which sale shall be at the door of the court house or place of holding courts in the county: And upon such sale he shall retain out of the proceeds accruing from it, the full amount of principal and interest unpaid on such loan, together with the per centage for failure of payment, as herein provided; and five per centum thereon for all his trouble, and such other costs as may accrue on said sale—paying over any residue that may arise from it to the mortgager of such land, or his legal representatives.

In case mortgager be dead.

Sec. 3. Any mortgaged lands liable under the provisions of this act to be sold for any default of payment, may, if the mortgager be dead, be sold without any notice to his or her heirs, or representatives, or others, except the advertisements

provided for by this act. And the title of the purchaser shall, in such case, be as valid as though the mortgager was living.

Sec. 4. If the amount made on such sale be insufficient to pay the debt, interest, and costs, and per centum, such commissioner or his successor, shall immediately proceed by action of debt to recover the residue, either in his own name as such commissioner, or in the corporate name of the congressional township to which such residue belongs, in which latter case such commissioner shall be a competent witness. Com'r to bring suit.

Sec. 5. Upon such sale of the mortgaged premises, each commissioner or his successor shall, on the reception of the purchase money make a deed of conveyance to the purchaser of the lands so sold, which shall vest in him the right and title of such mortgager thereto. Deed to purchaser.

Sec. 6. The board of trustees of the congressional township to which such debt and interest belongs, may order a member of such board to attend the sale and bid for the land an amount not exceeding the aggregate of such debt, interest, costs, and per centum, should no other person bid an amount equal to such aggregate. Trustees may bid off said land.

Sec. 7. Such order shall be recorded by the clerk of said board in his books, a certified copy of which in his hand shall authorize the member thereby appointed and holding the same to bid as aforesaid. Order to be recorded.

Sec. 8. Should such member bid off such land as aforesaid, such commissioner shall execute to the inhabitants of said township a deed of conveyance therefor, which shall vest in said inhabitants as such body politic and corporate the right and title of mortgager thereto. Com'r make deed.

Sec. 9. Such land shall afterwards be subject to the same provisions of this or any other law to which the sixteenth section of any congressional township is made subject.

Sec. 10. Should such land be bid in by order of such trustees as aforesaid, such cost shall be defrayed out of any school moneys belonging to such township, and their amount may be retained by such commissioner out of any such moneys which may then or thereafter be in his hands, he keeping a regular account thereof. Cost, how defrayed.

CHAPTER XII. *Townships and Districts acquiring and selling Land.*

Sec. 1. Any school district or congressional township may require a piece of land by devise or gift, or by sale and conveyance pursuant to the vote of the district or township meeting, which land shall enure to the sole benefit of the district as the same may be changed from time to time forever. District may acquire by gift &c.

Sec. 2. Any congressional township may by vote decide that any parcel of land conveyed to its inhabitants by gift or sale, shall be sold, on which decision the commissioner shall sell and convey the same, and the proceeds shall form part of the school funds of the township. Township may sell land.

Sec. 3. In making such sale the commissioner shall, as near as practicable, pursue the plan laid down for the sale of Terms of sale.

other school lands, except that he shall require the whole purchase money in hand.

District may
sell land.

SEC. 4. Any district meeting may decide that any parcel of land conveyed to its inhabitants shall be sold, and may prescribe the terms and manner of such sale, in which case the district clerk shall sell the same, and make a conveyance thereof under his hand and seal in the name of the inhabitants of such district, which instrument shall vest the interest of such district in the land, in the purchaser thereof, his heirs and assigns forever.

Conveyances le-
galized.

SEC. 5. Any conveyance or device hereafter made of any real or personal property to any township trustee, or to the trustees of any school district, or for the benefit or use of the inhabitants of such township or district for school purposes, hereby legalized, and such property shall enure to the sole use and benefit of the inhabitants of such district or township for such purposes forever.

Donations to
districts.

SEC. 6. Donations or devises of personal property being made to any school district, such property shall be subject thereafter to the entire control of such district.

Deeds recorded.

SEC. 7. All deeds, mortgages or other conveyances of real estate provided for by this act, shall be acknowledged, and recorded the same as other conveyances, and for the fees prescribed by this act.

Certificates lost,
a new one may
be obtained.

SEC. 8. That where any person shall have become the purchaser of any tract of school land, by virtue of the provisions of any law of this state, authorizing the sale thereof; and shall have received a certificate of purchase therefor, which such certificate such purchaser shall have lost, or the same shall have been destroyed by casualty, it shall be lawful for such purchaser to make affidavit of such loss or destruction before any person authorized to administer oaths, and after having given notice of three consecutive weekly publications in some newspaper printed in the proper county, or if none such be published therein, then in some newspaper published nearest thereto, of his intended application, he may make application to the proper school commissioner; upon the presentation of which affidavit to said school commissioner, together with satisfactory proof of the said notice having been given, he shall issue to the person so applying a new certificate for the said tract of land so purchased by him, which shall have the same force and effect as the original certificate.

CHAPTER XIII. *Drawing Interest for the use of Schools.*

Trustees draw
interest.

SEC. 1. The township trustees shall semi-annually on the first days of March and September, or within ten days thereafter, draw upon the superintendent of the loan office, and also upon the school commissioner for any interest of moneys belonging to their township, copies of which drafts shall be recorded by the clerk in his book.

Com'r shall pay
drafts.

SEC. 2. The superintendent and commissioner shall pay such drafts and file them away as their vouchers.

SEC. 3. The superintendent shall not be bound to recognize any such draft, unless the commissioner annexes his certificate thereto, that the persons making the same are trustees of their township. Drafts how made.

SEC. 4. The trustees shall not make any such draft unless the inhabitants of at least one district of their township shall have determined to establish a public school therein; or unless one or more householders may have employed a teacher in conformity to the fourteenth chapter of this act. When made.

CHAPTER XIV. *Employment of Teachers and distributing the funds.*

SEC. 1. After a school house is in readiness, the district trustees shall employ a teacher in pursuance of the vote of the district, for at least three months, on the most advantageous terms, taking ability into consideration. Teacher employed.

SEC. 2. No person shall be employed as a teacher in a district school, unless the district trustees are satisfied of his or her ability to teach reading, writing, and arithmetic. Ability of teacher.

SEC. 3. It shall be the duty of the circuit court of each county to appoint three suitable persons as examiners of common school teachers, who shall hold their offices for one year, and until their successors shall be appointed and qualified. Circuit court to appoint examiners.

SEC. 4. Each examiner shall take an oath or affirmation that he will make true certificates according to the provisions of this act. Shall take oath.

SEC. 5. It shall be the duty of each examiner to examine such persons as may apply for that purpose, and certify to the branches of learning that each applicant is qualified to teach. Examiner's duty.

SEC. 6. The certificate of any such examiner or examiners, are only to be used as auxiliary to aid trustees in determining qualifications of teachers, but shall not entitle the possessor to employment, without the examination and approbation of the trustees. Trustees shall examine teachers.

SEC. 7. The district trustees, in the absence of any directions of the district meeting may contract with a teacher that the inhabitants sending to his school shall pay a gross sum per month, per quarter, or per year; and in that case each shall pay in proportion to his sending to school. Trustees contract with teacher.

SEC. 8. The district trustees may, in the absence of instructions aforesaid, stipulate with the teacher that each inhabitant may make his or her own contract by subscription.

SEC. 9. But in either and all such cases each inhabitant shall be entitled to his share of the school funds adjusted as provided for by this act. Inhabitants entitled to school funds.

SEC. 10. No part of the school funds or rents shall be distributed to any district, except in cases provided for by this chapter and the sixteenth section of the fifth chapter, the third section of the sixteenth chapter, the twenty-second chapter and the twenty-third chapter of this act, unless the district treasurer shall first file an affidavit with the treasurer of the township, that there is a school house in the district (either built or

Distribution of funds restricted.

adopted) of convenient size, with sufficient lights, and that it is so furnished and repaired as to render the teachers and pupils comfortable; which oath the township treasurer may administer, and he shall be entitled to no fee therefor.

Persons not sending may draw funds.

SEC. 11. Any inhabitant sending to school in an adjoining district or township, and persons supporting a private school under the provisions of this chapter of this act, shall be entitled to draw the proportion of their school fund of the township in which they reside.

Statement of pupils filed by teacher.

SEC. 12. The teacher shall also produce to the district treasurer a duplicate of such statement of pupils, verified by his oath or affirmation endorsed thereon, which shall be filed away by such treasurer in his office, and his authority for paying over the portion of the school funds destined for the district, and a copy thereof shall be by the district treasurer deposited with the township treasurer.

SEC. 13. Each of said duplicates shall be *prima facie* evidence of its contents.

Any household er may employ teacher.

SEC. 14. If the inhabitants of any school district shall fail to elect district trustees, or if the district trustees fail to call a meeting for the purpose of establishing a school; or if a meeting has been called without resulting in an agreement to support a school, any one or more householders may employ a teacher, either male or female, to teach his or their children, and the children of others in the district who may wish to send upon such conditions as he or they can agree upon.

Teacher must have certificate.

SEC. 15. No teacher shall be employed under the fourteenth section of this act, unless he or she have the certificate of two of the examiners of common school teachers, stating in addition to the branches of learning he or she is qualified to teach, that such person is qualified to teach a common school.

Must keep a list, &c.

SEC. 16. The teacher so employed shall, the same as other teachers under this act, keep a list of days sent to school by each employer. And the township treasurer shall, on the presentment of such list sworn to, and the presentments of the certificates of the examiner, touching qualification, pay to each employer his or her proportion of the funds of the township.

Private school when to cease.

SEC. 17. Should the inhabitants of such district commence a school, the private school aforesaid shall cease at the end of the current quarter: or if continued longer, the employers of the teacher shall not be entitled to a dividend therefor out of the township treasury.

May send to other districts.

SEC. 18. Any inhabitants in whose district there is no school, or who is so situated as to render it inconvenient to send to the school of his or her district, by the consent of the trustees of his or her township and of the trustees of the district where such person is desirous of sending to, shall have the privilege of sending to any other district school in his or an adjoining township: *Provided, however,* That non-residents shall not be allowed any portion of the school fund of this state which is allowed to residents; nor shall persons who are not residents of this state be permitted to attend the schools organized under the provisions of this act, without the written consent of all the district trustees of such school,

Nonresidents shall not send to district school without consent of trustees.

nor shall any person who is not a resident of this state be allowed to attend said school where said person has taken boarding temporarily for that purpose, without the consent of said trustees as aforesaid: *Provided, however,* This section shall not be so construed as to prevent persons when living within any school district of this state, and who have a *bona fide* residence therein from attending said school, and drawing a due proportion of said school fund.

SEC. 19. The teacher shall keep a list of all non-resident pupils, and at the expiration of every three months, or on such pupils quitting school, shall give to the persons sending, a certificate of the number of days so sent, which with a duplicate shall be verified by his affidavit, before a justice of the peace or the treasurer of the township where such person resides.

Teacher must keep a list of nonresidents.

SEC. 20. Such duplicates shall be *prima facie* evidence of their contents, and shall be disposed of as the duplicates before mentioned.

SEC. 21. Any resident of one organized district, sending to school in another, shall upon the verified certificate of the teacher of said school, be entitled to draw from the treasurer of the district in which such person may reside, so sending to school, the same proportion of the school funds that he or she would have been entitled to, had he or she sent to a school in his or her own district.

Non-resident &c. must draw from his own district.

SEC. 22. Any person residing in an unorganized district shall be entitled to draw of the treasurer of the township of which the person so sending to school shall be resident, upon the certificate of the teacher as above directed, a similar proportion for every three months sent to school, that organized districts in the same township are entitled for each person between the ages of five and twenty-one years, sent to school for a similar term, which shall be credited to the township against such district.

Unorganized districts.

SEC. 23. But such inhabitants shall not be liable to perform any labor, or deliver any materials, or to pay any other tax to which the other inhabitants of his district are liable, as voted by them in their district meeting aforesaid, unless he intends to draw his proportion of such school fund aforesaid.

Inhabitants not to be taxed unless they intend to draw funds.

SEC. 24. In all cases where a teacher has been prevented from teaching the full term for which he was employed by reason of sickness or other good cause, his place may be supplied by another, to be selected by the district trustees; and each such teacher shall be paid for the time he rendered service, upon satisfactory proof being made of such service.

Where teacher has failed to teach his full term.

SEC. 25. Every pupil over the age of twenty-one years, attending a district school, shall be taken into the enumeration for a distribution of the dividend of the school fund as though such pupil were under that age.

Pupils how enumerated.

SEC. 26. All school districts that do not support a school in which the number of children between the ages of five and twenty-one years, does not amount to twenty-five, shall notwithstanding be entitled to receive their proportion of the money in manner following: After a district is laid out the town-

Districts where there are 25 children.

ship treasurer shall open an account with each district that does not contain twenty-five children between those ages, and give to it the credit for its proportion of the dividend for each year, and until one year after such number of children amounts to twenty-five.

Township treasurer shall loan funds.

Treasurer to pay over funds to district.

Draw funds to build school house.

Funds may be divided among other districts.

SEC. 27. The township treasurer shall loan the funds of any such weak district for one year at a time, at the best legal rate of interest that he can obtain on good security, taking notes signed by at least three good freehold securities.

SEC. 28. If within one year after the number of children in a district between said ages amounts to twenty-five, or at any time after the year before the distribution of the money, such district supports a school not less than three months in the year, it shall be the duty of the township treasurer, so soon as the same is paid into his hands by the borrower, to pay over to the district treasurer the whole of such reserved funds and the interest that shall have accrued thereon.

SEC. 29. Nothing in the preceding sections shall be so construed as to prevent any such district at any time from drawing their proportion of the funds of the township, to aid them in building a school house.

SEC. 30. After the expiration of one year from the enumeration, when any such district has twenty-five children between the ages of five and twenty-one years, if at the next division of money thereafter, such district has not supported a school at least three months, or drawn their funds to build a school house, the township treasurer shall divide the funds and the interest that may have accumulated thereon, between the other districts, or persons, in the townships that have supported a school or are about to build school houses.

CHAPTER XV. Suits.

Trustees may sue for injury done &c.

Statute of limitations shall not bar.

Suit how bro't.

Suit on Com'r's bond.

SEC. 1. The trustees of any congressional township, in the corporate name of their township, may sue and recover on any cause of action accruing to the inhabitants of the township in their corporate capacity, by reason of any injury done to school houses, school lands, or otherwise, whether such cause of action accrued before or after the commencement of their official character.

SEC. 2. No statute of limitations shall be pleadable in any suit brought by any school commissioner in his official, or by any township in its corporate capacity.

SEC. 3. In all cases where any suit is necessary to be brought against any person in any school district for failing to perform any duty, or to pay any assessment of tax for building or repairing a school house in such district, or for failing to perform any labor thereon, it may be brought in the name of the district trustees without setting forth their individual names.

SEC. 4. Suit may be brought on the commissioner's bond in the name of the state for the use of any congressional township, school district, person or persons, injured by any breach of the same, by such commissioner, and a further suit or suits may be brought thereon for any further and subsequent breach

to the injury of any other person or persons, township or townships, district or districts.

SEC. 5. The school commissioner shall by his proper name as school commissioner, be entitled to demand, sue for and recover, and receive all moneys arising from school lands in his county, or belonging to any township in the county over which he has jurisdiction; excepting in townships that have trustees; such trustees shall have all the control provided for in the seventh chapter of this act.

Commissioner may sue.

CHAPTER XVI. Duty of Teacher.

SEC. 1. Every teacher shall keep an entry of every person entitled to a distributive share of the school fund, with the number of pupils by him or her sent each day during the year next preceding the second Monday in March, with the sum total accurately calculated at the foot thereof, and file the same with the district treasurer. Teacher must keep entry, &c.

SEC. 2. Such list of pupils sent to school, verified by the teacher's affidavit, shall be laid before the township treasurer on or before the second Monday in March, which shall be sufficient evidence that there has been a school taught in such district. Make affidavit.

SEC. 3. The township treasurer shall thereupon pay over to each district treasurer, presenting such lists so much of said school funds in his hands, as they may be entitled severally to receive according to their list of persons between five and twenty-one years of age. Township treasurer shall pay over funds.

SEC. 4. The district treasurer shall within three days after, pay over (if the same is demanded) the funds by him so received, as well as any other school funds in his hands, to each inhabitant of his district in due proportion to the time sent to school by each, and the aggregate number of the whole, taking receipts therefor, which he shall carefully file in his office: *Provided nevertheless*, if the inhabitants or the trustees shall have made a contract to that effect with the teacher, the district treasurer shall pay to the teacher so much of said fund as is due him for service rendered, if so much shall have come to the hands of the treasurer. District treasurer shall pay over funds &c.

CHAPTER XVII. Taxation.

SEC. 1. Any congressional school land sold under this act, shall be free from state or county taxes, and none other until the same, but the non-payment of any other taxes assessed on such lands shall not operate as a forfeiture of the same until it be paid for to the proper authority. School lands exempt from tax.

SEC. 2. The mortgager of lands to secure the payment of the money loaned, shall be liable to pay the taxes thereon; and the personal property and other lands of the mortgager shall in the order named be first liable for such taxes. Mortgager liable to pay tax.

SEC. 3. The mortgage lien of the township on such land shall have preference to the lien of state or county for taxes.

Enumeration of districts taken. SEC. 4. If any district meeting decide to build or adopt a school house and support a school, or if a school house has been built or adopted, and a decision made to support a school in such district, in either case the trustees shall forthwith proceed to take an enumeration of all freeholders and householders in their district, who are voters, and of all persons therein under twenty-one years of age, and a list of the property subject to state or county taxes with the valuation thereof, by them made, and annexed to the name of each owner.

Enumeration taken by deputy. SEC. 5. The district trustees may take such lists and valuation by deputy, said deputy being sworn by the district clerk, who shall enter his appointment and oath in his book and give a certificate to the person or persons severally appointed.

Enumeration annually taken. SEC. 6. A like enumeration and list shall be taken annually thereafter unless a different decision be made at a district meeting.

Persons failing to give list. SEC. 7. If any inhabitant having such taxable property and being called on by the person or persons authorized to make out such list and enumeration (for that purpose) shall wilfully refuse or neglect to furnish a true statement in relation thereto, he or she shall forfeit five dollars, to be recovered by action of debt before a justice of the peace for the use of the school of such district.

Tax assessed to build school house. SEC. 8. After a list of the taxable property and enumeration of the inhabitants as aforesaid, any district intending to build a school house, shall, after taking into account, using or appropriating their portion of the fifty dollars contemplated by the fifteenth section of "an act in furtherance of an act to provide a fund to encourage common schools," approved February 2, 1832, approved February 7, 1835, and the labor of the freeholders and householders herein contemplated, determine by the vote of the persons whose property is listed, what tax shall be assessed, on what property, the proportion to each, and who (if any) shall be exempt from such tax or any part thereof, and whether the same shall be paid in work or materials on such school house, or in money, and what portion of each, and in fixing the proportion of each person, said district may take into consideration the number of each person's children to be educated, and other equitable circumstances: *Provided*, That real estate, lying within any school district belonging to non-residents of the district, may be taxed the same as any other real estate, by a vote of the district, for the purpose of building a school house.

Non-residents taxed. SEC. 9. Every able bodied male person being a freeholder of such district, of the age of twenty-one years or upwards, shall be liable to work two days on such school house, if necessary to complete the same.

Freeholders to work on school house. SEC. 10. Any person failing after two week's notice to comply with the requisitions of his district, by vote as aforesaid in money, labor at fifty cents per day, or materials at the value thereof, shall be liable to pay the same with costs of suit by judgment before a justice of the peace.

Persons failing may be sued.

Sec. 11. Such tax list or copy thereof, certified by the district clerk shall be prima facie evidence that the tax therein annexed to each person's name is due from such person. Tax list, evidence.

Sec. 12. The district trustees may transfer such judgment, for labor, materials or money, necessary for the school house, or they may coerce the payment of the same by execution. Judgment may be transferred.

Sec. 13. Every such delinquent may discharge such judgment previous to its transfer, or any sale under execution thereon, by paying all costs and furnishing the amount of the debt or damages thereof in such labor or materials (to be estimated by the district trustees) as in the opinion of such trustees are wanted about such building. Judgment how discharged.

Sec. 14. Taxes may be assessed and collected as aforesaid, in any subsequent year after such school house is built, and all expenses thereon paid, and may be appropriated to the support of the school by the district trustees subject to the direction of such meeting. Taxes may be appropriated to support schools.

Sec. 15. No district meeting shall direct a larger tax except the tax on building, re-building, or repairing their school house, than will make any person liable in one year for one-fourth of one per centum on the value of his property listed. Taxes not to exceed $\frac{1}{4}$ per cent.

Sec. 16. After such school house is built, and the expenses thereof paid, no person shall be liable to have his property listed, nor pay any taxes (unless he attends to, or does participate in the benefit of the school fund) but shall be allowed to send to such school free from any other tax than his just proportion of the necessary labor, materials, or money wanting from time to time to rebuild the school house or keep it in repair, he fulfilling his own contract with the teacher for tuition, fuel, and contingencies as in other cases. Taxes shall not be levied after school house is built, except &c.

Sec. 17. All persons paying taxes of any kind shall be entitled to a receipt therefor from the person receiving the same. Receipt.

CHAPTER XVIII. Fees.

The following fees shall be allowed for services rendered under this act:

School Commissioners' Fees.

Sec. 1. For each certificate of purchase of school lands to be paid by the purchaser,	\$0 25	School comr's fees.
Taking an acknowledgement of the assignment of any such certificate, to be paid by the person making the same,	12 1-2	
Each entry of payment of principal or interest on a loan by mortgage or on a purchase of school lands to be paid by the person making payment,	25	
Making a deed for purchaser of school lands, to be paid by the purchaser,	75	
Advertising sale in a public newspaper, to be retained out of the proceeds of the sale,	1 00	

Any other advertisement required by law in a public newspaper, for three insertions, 1 00
 Each additional insertion thereof required by law, 25
 The two last items to be allowed by the board or boards, as the case may be, doing county business.
 Taking each acknowledgement for the loan of school money, 12 1-2

SEC. 2. One per cent. out of any moneys by him deposited in the loan office.

His annual allowance.

SEC. 3. The county board shall allow the school commissioner, a sum not exceeding twenty-five dollars per annum over and above his specific fees, to be paid out of the county treasury.

Fees retained out of loan.

SEC. 4. The commissioner shall retain out of any loan, the following annexed fees:

To each trustee for the appraisement of any land contemplated to be mortgaged, \$0 25
 For recording the mortgage, 25
 For entering satisfaction of record of the same, 12 1-2
 For writing duplicate mortgages, 50
 For taking borrower's affidavit, 12 1-2

Recorder's Fees.

SEC. 5. For recording mortgage, \$0 25
 Recorder's fees. For entering satisfaction of record of the same, 12 1-2
 For recording a deed of gift to the inhabitants of a township or school district, 12 1-2

Township Clerk's Fees.

Township clerk's fees. SEC. 6. For a certified copy of the names of the voters of any district, \$0 12 1-2

Fees of Township Trustees.

Township trustees fees. SEC. 7. Each township trustee for each day's service by him rendered during any year shall be exempt at his option from one day of military duty, one day of road labor or fifty cents road tax to which he may be subject during the same year, except he be a commissioned military officer, or in case of war, invasion, or insurrection, or when required to aid the civil authorities.

Board doing co. business may allow further compensation. SEC. 8. Should the military duty, road labor, and road tax from which such trustee is exempted under the above provisions during any year, not amount to fifty cents per day, for each day of the service rendered as such trustee the board doing county business for the county in which his congressional township is situate, shall allow him such further compensation as will make the deficit.

When township is situated in two counties. SEC. 9. Should any congressional township be situate in two or more counties, the board doing county business in each of said counties shall make such proportion of the above named

compensation as that part of said township lying in their respective counties bears to the others as nearly as such proportion can be conveniently ascertained.

SEC. 10. Each township trustee shall have for the appraisement of any school land contemplated to be mortgaged, \$0 25

Fees of District Trustees.

SEC. 11. Each district trustee while in office, shall be exempt from military duty, except he be a commissioned military officer, or in case of war, invasion, insurrection, or when required to aid civil authorities.

SEC. 12. Such board or boards (as the case may be) shall also compensate such trustees in manner aforesaid, or in proportion aforesaid (as the case may be) for all moneys by them paid out, or expenses incurred in the necessary discharge of any other of their duties, for which, compensation is not provided by this act.

CHAPTER XIX.

The following forms may be used in all proceedings under this act:

Commissioner's Certificate of Sale.

SEC. 1. A B having on this day purchased the (here describe the land sold) being part of the school section belonging to congressional township number (north or south as the case may be) in range number (east or west as the case may be) in county, Indiana, for the sum of dollars and cents, of which he has paid dollars and cents, being one-fourth part of the purchase money, and one year's interest in advance on the residue of the principal, which is dollars and cents, and payable in ten years from this date, together with six per centum interest thereon annually in advance. And if full payment of said principal and interest be made within ten years from this date, then the said A B, his assigns or representatives, shall be entitled to a deed in fee simple for said tract in the name of said township. But on failure to pay said interest for any year, or the residue of said principal for six months after either becomes due, and also interest at the rate of one hundred per cent. per annum after either principal or interest has been due sixty days, until paid, the said tract and all payments therefor made thereon, and this contract of sale shall be forfeited and revert to the said township for school purposes.

Witness my hand and seal this day of , 18 .
 Commissioner.

Deed for congressional township of land sold by the Commissioner.

Deed of land sold.

SEC. 2. Whereas A B or his assigns, (as the case may be) has paid the sum of in full for the quarter of section number in township number of range number (or otherwise describing the land) containing acres. Now know ye that in consideration of the premises and in conformity with the statutes in such case made and provided, I, C D, school commissioner for the county of , for and in the name of "the inhabitants of congressional township number ," (here describe the township so as to identify it) do give and grant the said quarter, of section numbered , to the said A B, and to his heirs and assigns forever.

C D school commissioner, county seal. []

Mortgage.

Mortgage.

SEC. 3. I, A B, of the county of , Indiana, do hereby mortgage, assign over and transfer to , commissioner of the school lands in the county of and his successors in office, for the use of congressional township in range , the following described land, to-wit: to secure the payment of the sum of years from date with interest thereon payable in advance annually, I do agree that said land, and all my title, interest, and claim therein, may be exposed to sale if any part of such principal and interest or of either of them, be not paid at the time the same or either of them or any part thereof shall become due as herein stipulated, or within six months thereafter, for the payment of all the principal and interest in arrears with five per centum damage thereon and all costs: And I hereby acknowledge myself bound for the payment of any deficiency in the amount of principal, interest and costs, and after such sale, to be recovered by such commissioner or his successor in office by action of debt in any court of competent jurisdiction.

In witness whereof I have hereunto set my hand and seal this day of in the year A B [seal.]

Deed of land donated or sold to any School District or Congressional Township.

Deed of land donated to township or district.

SEC. 4. Whereas, the inhabitants of congressional township number (here describe the township) or the inhabitants of school district number (here describe the district) are in want of a piece of land on which to erect a school house, or for school purposes (as the case may be), now therefore know ye, that I, A B, in consideration of the premises (in case of a gift) or in consideration of the premises and dollars to me in hand paid, the receipt whereof is acknowledged, (in case of sale) for myself and my heirs forever, have given and granted, and do hereby give and grant unto all persons while inhabitants of such township or district (as the case may be)

the following parcel of land (here describe it) to their exclusive benefit, use and behoof forever.

A B [seal.]

Bond of District Treasurer.

SEC. 5. Know all men by these presents, that we, A B and C B, are held and firmly bound unto the state of Indiana in the penal sum of dollars, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, this day of .

District treasurer's bond.

The condition of the above obligation is such, that, if the above bounden A B, who has been appointed treasurer of school district number , township number , range number , in the county of , shall faithfully discharge the duties of said office, and at the close of the term thereof shall deliver to his successor, all books, papers, moneys, and property in his hands as such treasurer, then this obligation to be void; else remain in full force and virtue.

[seal.]
[seal.]

Approved by me , township clerk.

Bond of Township Treasurer.

SEC. 6. Know all men by these presents that we, A B, C D, and E F, are held and firmly bound unto the state of Indiana, in the penal sum of dollars, to the payment of which we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals this day of , 18 .

Township treasurer's bond.

The condition of the above obligation is such that if the above bounden A B, the treasurer of township , in range , in the county of , or in the counties of , (as the case may be), shall well and truly perform the duties of his office as treasurer of said township, and shall deliver over to his successor in office, all moneys, books, papers, and property in his hands as such treasurer, then this obligation to be void, else to remain in full force and virtue.

[seal.]
[seal.]

The above bond and security accepted by , school commissioner.

School Commissioner's Bond.

SEC. 7. Know all men by these presents, that we, A B, C D, E F, G H, I J, K L, and M N, are held and firmly bound unto the state of Indiana, in the penal sum of ten thousand dollars, to which payment well and truly to be made, we

Com's bond.

bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals this day of .

The condition of the above obligation is such, that if the above bounden A B, who was elected (or appointed) school commissioner for the county of , shall truly and faithfully discharge the duties of his said office, and deliver over to his successor in office, all property, moneys, books, and papers that may come to his hands as such commissioner, then this obligation to be void and of no effect; otherwise to remain in full force and virtue in law.

Attest:

Teacher's Certificate of the tuition of non-resident scholars.

Teacher's certificate.

SEC. 8. I, A B, teacher of the school district number , in township in the county of , do certify that C D, of township or district of township , has sent children to this school since , amounting in the aggregate to days.

Given under my hand and seal this day of , 18 .

Oath on the back of the preceding certificate.

Affidavit.

SEC. 9. State of Indiana, } ss. Personally appeared before me, a justice of the peace for the county aforesaid, (treasurer of township in the county aforesaid,) A B, the within named teacher, who subscribed the within certificate before me, and being by me duly sworn, says the within certificate is true.

Given under my hand and seal this day of , 18 .

Form of an examiner's certificate for a district teacher.

Examiner's certificate.

SEC. 10. I or we, examiner or examiners of teachers of common schools for the county of , having examined J W touching his or her qualifications to teach a common school, do certify that he or she is well qualified to teach [here insert the branches of learning.]

Given under my or our hands this day of , 18 ,
A B, }
C D, } Examiners.
E F, }

Examiner's certificate for a person that is to teach an unorganized school.

SEC. 11. I or we, examiner or examiners of teachers of common schools for the county of , having examined X Y, touching his or her qualifications to teach a common school, do certify that he or she is capable of teaching [here insert the

branch or branches]; and further that we consider him or her well qualified to teach a common school.

} Examiners.

Affidavit of a district teacher that there is a sufficient school house.

SEC. 12. State of Indiana, } ss. Personally appeared Treasurer's affidavit. before me A B, the treasurer of congressional township in range in the county or counties of C D, treasurer of school district number in said township, who says on oath that there is in said district a school house of convenient size, with sufficient light, and that it is finished and repaired as to render the teacher and pupil comfortable. Signed C D.
Sworn to and subscribed before me this day of .
A B, treasurer of town range .

Certificate of consent that scholars may be received at the district schools, not living in the district or township.

SEC. 13. We , trustees of township in range Certificate of consent to receive scholars out of township. in the county of do hereby give our consent that J D shall send the children under his care to the school of district number in township in said county.

Given under our hands and seals this day of .

} Trustees.

Certificate of consent to receive non-resident scholars into a school.

SEC. 14. We , trustees of the school district number Consent to receive non-resident scholars. in township in the county of do hereby consent and agree that J K, of the township of , or the district of township of , may send the children under his care, to-wit: R, S, T, and W, to the school of this district.

Given under our hands and seals this day of .

} Trustees.

Oath of office of the district Treasurer.

SEC. 15. I, A B, solemnly swear or affirm that I will faithfully, and to the best of my understanding and abilities perform the duties of treasurer of school district in township in the county of . Signed A B. Oath of district treasurer.

Oath of School Commissioner.

Oath of com'r.

SEC. 16. I, A B, solemnly swear or affirm, that I will faithfully, and to the best of my understanding and abilities, perform the duties of school commissioner for the county of . Signed

A B.

Oath of Township Treasurer.

Oath of township treasurer.

SEC. 17. I, A B, solemnly swear or affirm, that I will faithfully and to the best of my understanding and abilities, perform the duties of treasurer of township range in the county of . Signed

A B.

Oath of Township Trustee.

Oath of township trustee.

SEC. 18. I, A B, one of trustees of township number in range in the county of , do solemnly swear that I will faithfully and to the best of my abilities, perform my duty as such trustee. Signed

A B.

Sworn to and subscribed before me this day of .
School Commissioner.

Oath of teacher having taught school three months, &c.

Oath of teacher.

SEC. 19. State of Indiana, } A B, teacher of the school
county, } in district number in
township number in range in said county, personally
appeared before me, treasurer of said township, or justice of
the peace of said county (as the case may be) and made oath
that he or she has taught a school in the school house in the
said district (or adopted house describing it) for months,
which school was opened to all the inhabitants of said district,
and further that the statement hereunto annexed, of the pupils
sent to school for each day during that time is correct. Signed

, Teacher.

Sworn to and subscribed before me this day of .

Oath of District Trustee.

Oath of district trustee.

SEC. 20. I, A B, trustee of district number in township range in the county of , do solemnly swear that I will faithfully discharge the duties of trustee of said district to the best of my abilities. Signed

A B.

Sworn to and subscribed before me, (here add the title, whether clerk of the township or justice of the peace.)

Affidavit for loaning money.

SEC. 21. I, A B, do solemnly swear that a patent or deed for the (here describe the land) was issued to C D, from the

general land office of the United States (or the person or officer as the case may be.) A B.

Sworn to and subscribed before me this day of .
Commissioner.

I, A B, do solemnly swear that the following land (here describe it) has been paid for to the United States (or to the person or officer, as the case may be), and no patent has been issued thereon that this deponent knows of. A B.

Sworn to and subscribed before me this day of .
Commissioner.

Township Treasurer's Report.

SEC. 22. I, A B, treasurer of township number in Township treasurer's report.
range number in the county of (or counties of) , do hereby represent to the board of county commissioners, that I have under my care belonging to said township dollars and cents, personal property of the value of dollars and cents, notes against the following persons, of the following sums, to-wit:

Accounts and debts due said township from the following persons, and of the following sums, to-wit:

A B has leased for years ending on day for (here describe the rent, and in what payable.) Said township expended the last year for the sum of dollars and cents. There is now in the hands of the school commissioner of said county belonging to said township the sum of dollars and cents; said township has received from the commissioner during the year past, of interest the sum of dollars and cents; by virtue of "an act to provide for a fund to encourage common schools," and an act in furtherance of said act, the sum of dollars and cents.

Given under my hand this day of 18 . A B.
Township treasurer.

An order to draw money for building a School House.

SEC. 23. We A B, C D and E F, trustees of school district number in township number range number of lands sold at in the county of do hereby order and direct that our portion of the funds of said township shall be applied to the building of a school house in said district, and we wish the township treasurer for that purpose to pay it over to G H, the district treasurer. An order to draw money.

A B, [seal.]

C D, [seal.]

E F, [seal.]

Recorder's certificate of title.

SEC. 24. I, A B, recorder of the county of do hereby certify that by the books of my office it appears that C D has a Recorder's certificate.

deed for (here describe the land), from who has a deed from
 , and that a patent for said land in the name of from the
 United States, is on record in my office, and that there is no
 mortgage, lien, or claim against such land of record in my office.

Given under my hand and seal this day of 18 .

A B, [seal.]
 Recorder of county.

CHAPTER XX.

5000 copies of
 this act to be
 published.

Sec. 25. Five thousand copies of this act shall be printed and stitched in pamphlet form, with a strong paper cover, in addition to those printed and bound with the other general acts, the secretary of state appending a complete and explicit index thereto; and so many shall be distributed to each county in which there are lands reserved for the use of schools, at the same time and manner in which the laws of this session are to be distributed as that each school commissioner, each township clerk, and each district clerk shall have one copy, the secretary of state retaining the extra copies for further distribution.

Copies to be delivered to school commissioner.

Sec. 26. The clerk of each circuit court shall deliver the copies of this act by him received to the school commissioner of his county, to be by him distributed from time to time as required by this act, keeping the residue in his office.

CHAPTER XXI. *Relative to an act to provide a fund to encourage Common Schools.*

Cl'k of c. to perform the duty of school com'r.

Sec. 1. Where there shall have been no school commissioner elected or appointed in any county, the clerk of the circuit court of such county shall be authorized and empowered to perform and discharge the duties that would devolve upon such commissioners by the act entitled "an act to provide a fund to encourage common schools," approved February 2d, 1832; and such clerk shall perform such duties, and approve the bond of township treasurer if there be no school commissioner, and receive the like compensation as is prescribed and allowed by said act to the school commissioner.

Tax may be p'd cl'k when there is no school com'r.

Sec. 2. In all cases where under the above named act, any lands shall have been subject to a lien for any tax, penalty, or per centage, in any of the counties of this state, and the owner of such land, or any person in his behalf, shall at any time have been desirous of paying such tax, penalty and per centage, but has been prevented from so doing by reason of there being no school commissioner of the county in which such land is or was situated, it shall and may be lawful for such owner or any person on his behalf to redeem such land, by paying the school commissioner of the proper county, when any shall have been elected or appointed, and if not, then to the clerk of the court of such county, the amount of tax, penalty, and per centage, due at the time of his application, or of readiness, and having expressed a wish to pay the same with six

per centum on that amount; and such owner or other persons on his behalf, shall by disinterested affidavit prove the time of his readiness, when he expressed his wish to discharge such tax, penalty, and per centage, before any deduction of interest shall be allowed as aforesaid, and such affidavit shall be filed with such commissioner or clerk.

Sec. 3. Whenever any mistake shall have been made in description of any tract of land or town lot, in assessing the same, the board doing county business of the proper county upon application, and said mistake appearing to said board, shall correct any such mistake; and where the tax shall have been actually paid, the said board shall rectify the same, by applying the amount so paid, in payment of the tax of the tract or lot upon which said tax was intended to have been paid; and it shall be the duty of the clerk of said board to give such applicant a certificate of relief granted, which being filed with the school commissioner of the county, shall release said property from the amount so paid.

Mistake in description of land how corrected.

Sec. 4. The board doing county business shall rectify any mistakes, in the description of any lot or lands, at any time before or after the same shall have become forfeited, by the seventh section of the act entitled "an act to provide a fund for common schools," approved February 2d, 1832, and the several collectors of taxes are authorized to rectify any such mistakes in the description of any lots or lands, which may have been made in listing or assessing the same, at any time before the tax shall have been paid thereon.

Collector's return must describe the land.

Sec. 5. It shall be the duty of each collector in making returns to school commissioners to designate and describe the particular portion of any tract of land or town lot, if less than the whole of any tract or town lot by him returned.

Sec. 6. The fourteenth section of an act in furtherance of an act to provide a fund to encourage common schools, approved February 2d, 1832, is hereby repealed; and it shall be the duty of the several school commissioners, to pay over to the several township treasurers from time to time as the money contemplated by these acts shall come into their hands in due proportion to the number of children between the ages of five and twenty-one years in each township.

Com'r pay over money.

Sec. 7. It shall be the duty of each township treasurer to return to the school commissioner on or before the first Monday of March each year the number of children in his township between the ages of five and twenty-one years: *Provided*, That there shall be nothing in this act so construed as to prevent any school funds in the state from being vested in bank stock as provided in an act to amend the bank charter, approved January 26th, 1836.

Township treasurer return to com'r number of children.

CHAPTER XXII. *Library.*

Sec. 8. It shall be lawful for any school district that supports a school at least three months in the year, to have a library for the use of the children, teachers, parents and guardians,

District may have a library.

Library how
procured.

Notice.

Tax when and
how levied.

Election how
conducted.

Assessment how
made.

Tax for library
how collected.

Moneys how ap-
propriated for
library and how
paid over.

to be purchased under the direction of the district trustees, and to be governed by their by-laws, rules and regulations and recorded in the book of the district clerk, not inconsistent with the laws of this state.

Sec. 9. Such library may be procured by voluntary subscriptions, or the inhabitants of any district may determine by a vote whether they will raise any given sum not exceeding twenty dollars in any one year for such purpose, by a tax on the ad valorem plan, in which vote they shall determine the per centum on the hundred dollars worth of property.

Sec. 10. There shall be notices posted up in three of the most public places in the district, three weeks preceding the time and place of election to raise a tax for a library.

Sec. 11. No such tax shall be levied unless the aforesaid notices have been given expressing the object of the election to be proved by the affidavit of some person of the age of twenty-one years or upwards, to be administered by the district clerk previous to opening such election.

Sec. 12. Nor shall such tax be levied unless a majority of all the householders and freeholders resident in the district vote in favor of it.

Sec. 13. Such election shall be conducted in the same way that other district elections are conducted, and if the result is in favor of a tax for a library, the judges and clerks shall certify the same to the clerk of the township trustees, who shall record the same in his books, and make out duplicate assessment rolls in conformity to the result of such elections.

Sec. 14. The township clerk in making out his assessment rolls, shall estimate the value of the property of each person by the latest list taken of property for the purpose of levying a state and county tax.

Sec. 15. One of such duplicate assessment rolls shall be given to the district treasurer, who shall thereby be authorized to collect the same, and shall have power to coerce the payment by seizing and selling personal property in the same manner that the collectors of state and county revenue are authorized to seize and sell personal property for the non-payment of taxes.

Sec. 16. If any such district as aforesaid at any legal authorized meeting by a majority of the householders and freeholders of the district determine that they will appropriate any part of their proportion of the school fund in the township treasury not exceeding one-fourth for the purchase of a library, or for the increase of a library already begun, the result of which vote shall be certified by the judges and clerks of the election to the clerk of the township, who shall record the same in his book, and such record shall be a sufficient voucher to authorize the township treasurer to pay over to the district treasurer the sum so voted to be appropriated for a library.

CHAPTER XXIII. Township Money to build School House.

Sec. 1. Any school district that has no school house, may without having kept a school, draw from the township treasurer the proportion of the funds on hand according to the number of children in such district at the last enumeration between the ages of five and twenty-one years, compared with the whole number of children between those ages in the township for the purpose of building a school house.

Sec. 2. To entitle the district to such a draft the trustees shall enter an order in the book of their clerk, that they intend to apply the proportion of their funds (or a given part thereof) in the township treasury, to the building of a school house, a duplicate of which shall be signed by such district trustees and deposited with the township treasurer, and by him recorded in his book, which shall be a sufficient authority to the township treasurer to pay over the money as above provided.

Sec. 3. The money so paid may be recovered back with interest and costs of suit, by action of debt in behalf of the proper "congressional township," to be brought in the name "congressional township," by its proper description, in case such money be not applied to the building of a school house in the district within six months after drawing the same, which suit shall be against the district trustees, that gave the order for the money, in their individual capacity, and execution shall issue on any judgment obtained against their individual property.

Sec. 4. It shall be the duty of the school commissioner of any county in this state, in case when such commissioner has failed or neglected to comply with the requisitions of the first section of an act, approved February 7, 1835, entitled "an act in furtherance of an act to provide a fund to encourage common schools," approved February 2, 1832," to proceed, at the next ensuing, or some subsequent term of the circuit court in his proper county, to do and perform all the duties, required by said section referred to in the time, way and manner directed by said section, which shall be as legal and valid as though it had been at the time required by the section above referred to.

Sec. 5. That in actions by any board of commissioners of any county in this state in their corporate capacity, or by or against the trustees or inhabitants of any township, congressional township, or school district, in their respective representative or corporate capacities, any person who may be a resident citizen or inhabitant of such county, township, congressional township, or school district, shall not by reason thereof be deemed incompetent to give evidence in such action, but the testimony of such resident, citizen or inhabitant shall be received in all such suits at law or in equity, subject to other legal rules of evidence, in the same manner as if such person had no interest in the event of such suit.

All acts and parts of acts coming within the purview of this act, be and the same are hereby repealed.

CHAPTER XCV.

An Act to provide a Fund to encourage Common Schools.

[APPROVED FEBRUARY 2, 1832.]

Collector shall certify delinquent land list to school com'r and clerk, and how credited.

Commissioner shall add per cent. &c. and certify to treasurer of state.

Lien on land for taxes, &c.

Delinquent list, how posted.

Compensation to clerk, &c.

Commissioner shall loan money.

County board shall inspect commissioner's books &c.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the several collectors of revenue in this state, on or before the first day of December annually, to certify a correct description of the lands and lots, on which taxes are not paid, by non-residents and others, who have no personal property to pay their taxes, to the school commissioners, and also to the clerks of the proper counties; each of whom shall record said return, in books to be kept for that purpose; and the certificate of such clerk, of the amount of state and county tax due on such lands and lots, shall be received by the auditor of public accounts, and county treasurer, in making settlement with such collectors.

SEC. 2. The said school commissioners, shall charge each tract or lot of land, returned as aforesaid, with a penalty of fifty per cent. on the tax assessed thereon, and at the rate of one hundred per cent. per annum, on said tax, till the same shall be paid, and they shall on or before the tenth day of December annually, certify to the treasurer of state the amount of lands on their books, charged with the non-payment of taxes, and the sums paid within the year, for the redemption of such lands. And the treasurer shall lay an abstract of the same before the legislature.

SEC. 3. The said tax, penalty and per centage, shall be a lien on the lands on which they are charged, until paid to the school commissioner, and his receipt is filed with the clerk of the circuit court, who shall give a certified copy thereof, to the person making such payment.

SEC. 4. The clerks of the several counties, shall, in the month of December annually, set up in their offices, and two other public places in the county, copies of the said list of lands and lots, with the charges against them. And the said collectors, clerks and school commissioners, for the services prescribed to them by this act, shall each receive four per cent. on moneys paid for the redemption of such lands.

SEC. 5. The school commissioners shall loan out the moneys coming into their hands by virtue of this act, in the same manner as the moneys arising from the sale of school sections. And the interest on such loans shall be faithfully and equally applied, for the use of common schools, in the manner hereafter directed by the legislature.

SEC. 6. Each school commissioner shall submit his books and proceedings under this act, to the county commissioners, at their March term annually; and they shall compare his entries with those of their clerk, and certify whether they be found correct, and if not, they may order him to be prosecuted on his bond.

SEC. 7. When any land, charged as aforesaid, shall not be redeemed for three years, the school commissioner shall state that fact, in his annual report, to the treasurer, together with such particulars as he may be able to ascertain, respecting the value of the land, and the title to the same; and such land may be thereupon sold for the purpose of augmenting said common school fund, in such manner as shall be provided by the legislature. Land shall be sold after three years for school purposes.

SEC. 8. So much of the act for assessing and collecting the revenue, approved February 10th, 1831, as authorizes collectors to sell lands for the non-payment of taxes, is hereby repealed. Repeal.

SEC. 9. So much of the act to which this is an amendment, as requires collectors of state and county taxes, to advertise the sales of lots and lands, in a newspaper, and so much as requires clerks to make out a detailed list of delinquents, to enable the collectors to settle with the auditor of public accounts, is hereby repealed. And hereafter, the clerks in their respective counties, shall certify under their hand and seal of office, the gross amount of credit such collector may be entitled to, on settlement with the auditor of public accounts. Repeal.

An Act in furtherance of "an act to provide a fund to encourage Common Schools," approved February 2d, 1832,

[APPROVED FEBRUARY 7, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever three years shall have elapsed after any land or lots shall have been returned to the school commissioner, or officer acting as such, it shall be his duty to make out a correct list of all such land or lots, giving a description thereof, with the supposed owner's name, if known, and cause the same to be published four weeks successively in a newspaper printed in the county, or if no paper be printed in the county, then in a newspaper in the nearest county in which a paper is published; and he shall also give to the prosecuting attorney a copy of such list, on or before the first day of the next following term of the circuit court, held in the county in which such land is situated; and he shall also cause a written or printed statement thereof to be put up at the court house door the same length of time preceding the next circuit court; which notices shall express that unless the taxes, penalties, percentage, and cost be paid on or before the next sitting of the circuit court after the end of said four weeks, that a motion will be made for judgment on the second or some subsequent day of the term of said court, that any or all such tracts of land or lots on which any money is due as aforesaid shall vest in the state of Indiana. List of land &c. returned to school com'r to be published after the lapse of three years. List to be given to the prosecuting attorney.

SEC. 2. It shall be the duty of the prosecuting attorneys of the several courts, to move the court in the name of the state of Indiana, for a judgment that each tract or lot of land on which any money is due as aforesaid, shall vest in the state of Indiana. Notice to be put up at co't house door. Prosecuting attorney to move the court for a judgment.

ana: which motion shall be entered of record as founded on the school commissioner's list, and such motion shall be deemed equivalent to a declaration.

Defence of owner.

Sec. 3. The owner of any such tract of land shall have the right to appear by himself, agent or attorney, and prove that he has paid all such taxes, and the taxes that may have since accrued on such land or lot, if any, together with the additional penalty, percentage and cost, if any, to the proper officer; or shall have the right to prove payment or any part thereof, and bring the residue into court, to be paid by the proper officer, at the time of making such proof; and in such case no judgment shall be rendered against such tract or lot of land.

Judgment vesting land &c. in the state.

Sec. 4. If there be no proof, or the proof being insufficient on the part of the claimant, or the money so required to be brought into court, (if any,) be not so brought into court, the court shall give a judgment, order or decree that such land or lot shall vest in the state of Indiana; which judgment, order or decree, shall absolutely vest the title to such tract or lot of land, in the state of Indiana for the use of the common schools of the county in which the same is situated.

Lands so vested to be sold.

Sec. 5. The school commissioner or officer acting as such, shall from time to time, sell all land so vested in the state of Indiana as soon as convenient; and in all other respects he shall be governed as near as possible in such sale (without contravening the provisions of this act) by the provisions of "an act incorporating congressional townships, and providing for public schools therein" approved [February] 2d, 1835: *Provided*, That no vote of the inhabitants of any county or of any part thereof shall be required to authorize such sale.

Com'r's certificate prima facie evidence of contents.

Sec. 6. The certificates of the school commissioners, or officers acting such, shall be *prima facie* evidence that the facts therein stated are true, and evidence of possessory title in any suit involving the same.

Deeds prima facie evidence of contents.

Sec. 7. The deeds made by the school commissioners or officers acting as such, shall be *prima facie* evidence that all the facts therein stated are true.

Suit may be instituted within two years after entry of judgment for the recovery of land not subject to tax &c.

Sec. 8. The owner or owners of any such lot or land, or any person or persons deriving title from such owner or owners, may at any time within two years after the entry of such order, judgment, or decree, if such lot or land was not subject to taxes, or the taxes thereon had been paid, (contrary to the statement of such return) institute a suit for the same, and if plaintiff or plaintiffs succeed in such suit involving the title derived from the state as aforesaid, so as to oust or evict the purchasers, his or her heirs or assigns of such lot or land in whole or in part of the same, such purchaser, his or her heirs or assigns shall be entitled to receive from the school commissioner or other officer entrusted with the funds, the original purchase money of the land or lot of which he, she or they shall be so ousted or evicted, without interest; but such purchaser, his or her heirs or assigns, shall in no case be liable for any rent for the use or occupation of such lot or land.

Purchaser under the state being ousted shall be entitled to purchase money without interest

SEC. 9. The listers and their securities shall be liable for all damages sustained by improper listing. Liability of listers.

SEC. 10. The collectors and their securities shall be liable for all damage sustained by any such collector making an improper return. Liability of collectors.

Sec. 11. School commissioners and officers acting as such, and their securities, shall be liable for all damages sustained by reason of any improper returns being made by them or either of them in the list furnished to prosecuting attorneys. Liability of school com'rs.

Sec. 12. The order, judgment or decree of a circuit court founded on any such return, shall be *prima facie* evidence that the taxes on the land or lot were unpaid, and that the same was subject to such taxes; and shall be conclusive evidence of the truth of such return and all the other proceedings and facts not in this section mentioned, on which such order, judgment or decree is predicated. Judgment prima facie evidence that the taxes were unpaid, &c., conclusive as to truth of return &c.

Sec. 13. Any such order, judgment or decree shall be subject to an appeal to, or writ of error from the supreme court. Appeal.

Sec. 14. Moneys raised by virtue of this act or the "act to provide a fund to encourage common schools," approved February 2, 1832, shall, by the school commissioner of each county, or other officer acting in his stead from time to time, as the moneys may come into his hands, be paid to the order of the several township trustees, in the same manner as interest on the township money is now disbursed, according to the provisions of an act incorporating congressional townships and providing for public schools therein, approved February 2, 1833; *Provided, however*, That for the purpose of making an equal and just distribution of the fund contemplated by this act, it shall be the duty of the township treasurers to make return of the several lists returned to them by the teachers within ten days after receiving the same, to the school commissioners of the county or the person acting as such. Moneys raised by this act, how disposed of.

The school commissioner shall upon the receipt of said lists, distribute the money to the several district treasurers in the same manner and in the proportion that each teacher's list bears to all the lists in the whole county as is provided by the 175th and 176th sections of the last named act for the township treasurers to pay over money to the district treasurers. Proviso.

Sec. 15. Each school district that is or may be destitute of a school house, shall be entitled to draw and use out of its proportion of the fund provided for by this act, or the act of which this act is in furtherance, any sum not exceeding fifty dollars, to aid the inhabitants thereof in building a school house, but no such district shall thereafter draw any money in any year that they do not maintain a school at least three months. Appropriation to aid in building school houses.

Sec. 16. The compliance or non-compliance of the school commissioners with the act of which this act is in furtherance, so far as it relates to making returns to the treasurer of state, shall in no way be construed to affect the title to any land or lots contemplated by said act or this act. Com'r failing to make return to state treasurer not to affect title to land &c.

Sec. 17. It shall nevertheless be the duty of the school commissioners or officers acting as such, to make such returns Return to treasurer of state.

Penalty for neglecting it.

Treasurer of state shall have suits brought, &c.

Penalties collected, how applied

Duty of collector to return amount of state taxes, &c. unpaid.

Com'r to compare collector's return with record of former returns, &c.

Am't to be paid before owner can redeem.

Duty of collectors as to delinquent lists.

Treasurer of state to make forms for school com'rs, for their lists, &c. to be recorded by com'r.

annually; and any school commissioner neglecting to do the same, shall be liable to the penalty of fifty dollars, to be recovered by action of debt, to be brought by the prosecuting attorney, with the costs of suit; and the official certificate of the treasurer shall be *prima facie* evidence of such neglect.

SEC. 18. The treasurer shall inform the several prosecuting attorneys of the delinquency of school commissioners in making returns, and shall direct suits to be brought.

SEC. 19. The penalties collected from school commissioners under this act, shall be applied to the use of common schools of the counties in which the several delinquent school commissioners may respectively reside, to be divided in the manner provided in the 14th section of this act.

SEC. 20. It shall be the duty of said collector to embrace in his said return, the amount of state, county and other tax, if any, on each tract of land or town lot remaining unpaid at the time of making such return.

SEC. 21. For the purpose of enabling him readily to determine what taxes are due, and to prevent the penalty and percentage from being chargeable on more than one year's tax at once, it shall be the duty of the school commissioner so soon as the return is made to him by the collector, carefully to compare the return so made with the records on his book of former returns, and note on the margin of such last return each and every tract of land or town lot embraced in the same, and yet unredeemed and subject to the annual charge of one hundred per centum, and then proceed forthwith to record in his book, all the remaining tracts and town lots not so marked and noted as unredeemed as aforesaid.

SEC. 22. Before any owner shall be entitled to redeem, he shall besides the penalty and percentage contemplated by this act, also pay to the school commissioner or other officer, a sum equivalent to the yearly taxes assessed and unpaid on any such lots or land, to be applied as other moneys contemplated by this act.

SEC. 23. That it shall be the duty of the collectors of the several counties, previously to making return of their delinquent lists, to certify to the school commissioner of the proper county, or the officer acting as such, a description of the lands and town lots on which the taxes are not paid by non-residents or others, agreeably to the first section of the act to which this is amendatory, and before the boards doing county business shall allow, or the clerk certify to the auditor any delinquent list, the said collector shall be required to make affidavit that he has duly made such return to the school commissioner as is required by law.

SEC. 24. It shall be the duty of the treasurer of state to make out and transmit to each school commissioner in this state, full and complete forms for their lists and returns; which the said commissioners shall so soon as they shall receive the same, record at full length in their books, and shall be governed by the same in the manner of making their returns and the said treasurer for making out and transmitting said forms, shall be al-

lowed such compensation as the governor may deem reasonable to be paid out of the contingent fund.

SEC. 25. If any lot or tract of land belonging to a minor ^{Minors, remedy of, whose lands have been sold.} under the age of twenty-one years, having no father living, or guardian within the state and at the time of forfeiture shall by any such judgment, order or decree, be vested in the state of Indiana, such minor or minors, shall at any time before the expiration of one year from and after the time when such minor or minors shall arrive at the age of twenty-one years, on prosecuting his, her, or their claim to such lot or tract of land to be entitled to receive from the school commissioner, the amount of the purchase money on the sale of such lot or tract of land made by the school commissioner as aforesaid, after deducting the amount of taxes, for the non-payment of which said land or lot was returned by the collector.

SEC. 26. Three hundred copies of this act and the act ^{Extra copies of this act &c to be printed.} which this is in furtherance of, in addition to those printed and bound with the other general acts shall be printed together and stitched in pamphlet form, with a strong paper cover, to be distributed to the several school commissioners and collectors.

SEC. 27. Such necessary expenses and services as may be incurred in carrying into effect the provisions of this act, by ^{Expenses of carrying into effect this act, how paid.} school commissioners or other officers acting as such, shall be certified to the board doing county business of the proper county and upon their approval and order, the amount shall be retained out of the moneys raised under the provisions of this act.

CHAPTER XCVII.

AN ACT for the appointment of trustees to receive deeds for lots or land given or purchased for the use of schools, meeting houses or masonic lodges.

[APPROVED FEBRUARY 10, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever any congregation, religious society or church, shall be desirous of procuring or receiving by gift, grant, donation or purchase, any lots or lands, not exceeding in quantity one hundred and sixty acres, for the purpose of erecting thereon any school or meeting house, it shall be lawful for such congregation or society, or a majority of them, to meet at some public place, in the neighborhood of such church, society or congregation, after having given ten days notice thereof, either at the usual time and place of public worship, ^{How trustees to receive deeds shall be elected.} by advertisement set up at three public places in the vicinity, or by notice in some public newspaper printed in the county, and then and there proceed to the election of not less than ^{Notice of election.} three nor more than five trustees, a majority of whom shall be ^{Three or five trustees.}

capable of receiving a deed or deeds for such lots or lands so acquired by gift, grant or purchase, for the use of such church, society or congregation, who shall continue in office for one year after their election, and until their successors are elected; and the clerk of such election, shall within ten days thereafter deposit in the recorder's office of the county, where such lots or lands may lie, a certificate of the election of said trustees, which such recorder shall immediately record in some book in which deeds are recorded; and the lots or lands so deeded, by gift, grant, donation or otherwise, to the trustees aforesaid, shall vest in them and their successors in office, for the sole use and benefit of said society, church or congregation forever, all the right and title to such lots or lands; and when any lot or lots of ground as aforesaid, shall be within the bounds of any incorporated town, such society, church or congregation, shall not establish any grave-yard thereon [without the consent of the trustees:] *Provided however*, that after the first election which may be held by such church, society or congregation, after their organization, a majority of those who shall actually attend any annual or stated meeting thereof, shall be authorized to proceed to elect the trustees as before provided for, and may adopt such rules and regulations for future elections, and for conducting business, as they may deem expedient, not inconsistent with the constitution and laws of this state or of the United States.

Sec. 2. The trustees elected in pursuance of this act, or chosen in pursuance of the rules which may be established by such church, congregation or society, after such election shall have been recorded in the recorder's office as above provided for, shall have full power and authority to receive conveyances of lots or lands, whether the same be by gift, grant, donation, purchase or otherwise, for and on behalf of their respective societies, and to and for the sole and exclusive use and benefit of the same, within the true intent and meaning of this act, not exceeding in amount the quantity of one hundred and sixty acres aforesaid, which shall be held by them and their successors in office, in perpetuity, for the purposes aforesaid, and shall also be and they are hereby authorized to acquire and hold personal property, not exceeding in amount the sum of five thousand dollars, for like purposes; and where they shall deem the same necessary and proper, to appropriate their funds to the maintenance of religious worship, grave-yards, schools and libraries, and to the erection of all buildings, and providing all conveniences requisite thereto; and in furtherance of such objects, may sell, lease or otherwise dispose of any of their corporate property so acquired, and a sale and conveyance by such trustees or a majority of them, on behalf of their respective societies, shall vest in the purchaser or purchasers, all the right and title of said society, church or congregation of, in, and to the same; and by the proper name of their respective societies, churches and congregations, may appear in all courts and places, to prosecute and defend on behalf of the same, the rights hereby granted: *Provided however*, that

Term of office. capable of receiving a deed or deeds for such lots or lands so acquired by gift, grant or purchase, for the use of such church, society or congregation, who shall continue in office for one year after their election, and until their successors are elected; and the clerk of such election, shall within ten days thereafter deposit in the recorder's office of the county, where such lots or lands may lie, a certificate of the election of said trustees, which such recorder shall immediately record in some book in which deeds are recorded; and the lots or lands so deeded, by gift, grant, donation or otherwise, to the trustees aforesaid, shall vest in them and their successors in office, for the sole use and benefit of said society, church or congregation forever, all the right and title to such lots or lands; and when any lot or lots of ground as aforesaid, shall be within the bounds of any incorporated town, such society, church or congregation, shall not establish any grave-yard thereon [without the consent of the trustees:] *Provided however*, that after the first election which may be held by such church, society or congregation, after their organization, a majority of those who shall actually attend any annual or stated meeting thereof, shall be authorized to proceed to elect the trustees as before provided for, and may adopt such rules and regulations for future elections, and for conducting business, as they may deem expedient, not inconsistent with the constitution and laws of this state or of the United States.

Certificate of election to be filed and recorded.

Effect of deed.

Cemetery in towns prohibited.

Proviso.

May make rules.

How trustees may take deed in trust &c.

Limitation to 160 acres.

May hold personal property to \$5000, and how appropriated.

May sell or lease their corporate property.

Corporate powers.

Proviso.

this section shall not be so construed, as to affect any donations heretofore given, but such donation shall be conveyed and disposed of, agreeably to the intention of the original donor under the provisions of this act.

SEC. 3. Any religious society, the inhabitants of any school district, or any congregation whatever, that previous to the passage of this act, may have received any lot or tract of land, not exceeding five acres, by donation or purchase, for the purpose of erecting on the same a house of religious worship, a school house, or other building appropriated to such congregation, and may be desirous of holding the same in perpetuity, by trustees as prescribed in this act, are hereby authorized and empowered so to do, on having first obtained the consent thereto, of at least two thirds of the persons interested in such lot or tract of lands, and elected trustees, and caused the certificate of their election to be recorded in the recorder's office of the proper county, agreeably to the provisions of the first section of this act, upon which the fee simple of such lot or tract of land, shall be vested in the said trustees, and their successors in office for the use and benefit of their said society, district or congregation, as the case may be, as fully in every respect, as if the same had been made to them in trust, in the first instance; and said trustees of such religious society, school district or congregation, shall have the same rights and privileges, in and over such lot or tract of land by them so held, and be subject to all and any of the provisions of this act, relative to trustees in other cases; any law, usage or custom to the contrary notwithstanding.

Sec. 4. That the rights, privileges, benefits and immunities hereby granted and extended to congregations and religious societies, are hereby granted and extended to the grand lodge of Indiana, and to the several lodges which now are or hereafter may be subordinate to the said grand lodge.

Sec. 5. The said grand lodge of Indiana, by the name and style of the grand master, deputy grand master and wardens of the grand lodge of Indiana, and the lodges which now are and may hereafter be subordinate to the said grand lodge, by the name and style of the master and wardens of lodge number , taking to themselves such name and number as have been or may be assigned to them, by the grand lodge of Indiana, shall be able and capable in law to purchase, have, hold, receive, enjoy and retain to themselves in perpetuity, or for any term of years, any lands, tenements, or hereditaments, of what kind or nature soever, not exceeding in real estate one acre of ground, together with the improvements thereon, and of personal estate, not exceeding the sum of five thousand dollars; and to sell, alien or lease the same, as they or each of them may think proper.

Sec. 6. The same powers, rights, privileges and immunities, which are by this act conferred on, and extended to the said subordinate lodges, are hereby extended to, and conferred on each and every chapter of royal arch masons, now established in this state, or which may hereafter be established, according to the principles of royal arch masonry.

On dissolution of society, it may be received and how.

Proviso, trustees may be elected according to custom, &c.

New trustees vested with the powers of the old.

Certificate of new trustees.

The provisions of this act extended to persons purchasing burying grounds.

Sec. 7. Where any congregation, religious society, masonic lodge, or inhabitants of any school district, shall have elected trustees in conformity to the provisions of this act, and such association shall have been dissolved, by the death, resignation or removal of its members, a majority of those persons interested, may within five years after such dissolution, proceed to elect a new board of trustees, in conformity to the provisions herein contained: *Provided however*, that any religious society, with the consent of a majority of its members, may select or appoint trustees, according to the common usage or custom of said society; the names of the trustees so appointed, shall be certified to the recorder of the county, in the same manner as if an election for trustees had taken place.

Sec. 8. That the new board of trustees elected as aforesaid, and also any board of trustees appointed by any religious society, as provided for by the proviso to the last section of this act, shall be vested with the same powers, and do and perform all acts and things, which by the provisions of this act, trustees could legally do and perform.

Sec. 9. That it shall be the duty of the trustees who may be elected or appointed as last provided for, within ten days after their election or appointment, to produce to the recorder of the proper county, a certificate of their election or appointment, as the case may be, and such recorder shall immediately record the same, as provided for in the first section of this act.

Sec. 10. That all the provisions of this act be and they are hereby extended so far as the same may be applicable to any individuals who may think proper to unite themselves together for the purpose of receiving donations of land or purchasing the same for burying grounds, and that when such donations shall be made to any such individuals, and a certificate thereof, together with the articles of association by which individuals become united for such purpose, shall file in the office of the recorder of the proper county, and by him recorded, such individuals shall enjoy all the privileges necessary for the preservation and protection of such burying grounds in the same manner as if such individuals were regularly incorporated by law, and that such burying ground shall forever remain as such.

AN ACT for the benefit of literary societies.

[APPROVED JANUARY 13, 1834.]

Provisions of the foregoing act extended to literary societies.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the provisions of the act entitled "an act for the appointment of trustees, to receive deeds for lots or lands, given or purchased for the use of schools, meeting houses, or masonic lodges," approved February 10, 1831, be, and the same are hereby extended to all and each of the literary societies attached to the several colleges and academies within this state.

AN ACT to amend an act entitled "an act for the appointment of trustees to receive deeds for lots or lands, given or purchased for the use of schools, meeting houses or masonic lodges."

[APPROVED JANUARY 26, 1836.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the trustees who have been heretofore, or may hereafter be elected by any congregation, religious society or church, shall severally hold their offices, until their successors shall be duly elected or appointed, according to the rules of such society, church or congregation, and that hereafter, when any religious society, church or congregation shall be desirous to change any of their trustees, either to fill vacancies or for other purposes, or to hold election for the same, they shall by an order of said church or congregation, direct the same to be holden agreeably to the provisions of the act to which this amendment; which election shall, in all things, be conducted agreeably to the provisions of the law.

SEC. 2. So much of the act to which this in an amendment as requires an annual election, be and the same is hereby repealed.

CHAPTER XCVII.

AN ACT concerning the secretary of state.

[APPROVED JANUARY 19, 1831.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the secretary of state, in addition to the duties enjoined on him by the constitution, shall affix the seal of the state to all public instruments, to which the governor's signature now is or may hereafter be required by law.

SEC. 2. That all obligations which now are or hereafter shall be required by law to be given to the state, (except in cases otherwise provided for by law) for the faithful discharge of any office, commission or public trust, and the sureties therein to be approved of by the governor, shall be taken by the secretary of state, for the uses and purposes therein respectively expressed, and recorded in his office: and copies of such obligations, duly authenticated under the seal of such office, shall be admitted as legal evidence, in any suit or suits, that may or shall be brought against such obligors or their securities.

SEC. 3. That the said secretary of state shall keep and preserve all acts passed by the general assembly, and shall permit the books, papers, accounts and transactions of his office to be at all times open to the inspection and examination of committees of either branch of the general assembly, and shall

furnish such copies or abstracts therefrom, as may from time to time be required.

Secretary's
bond.

Bond to be re-
corded.

Shall keep brand-
ing iron, brand
state property,
&c.

Shall preserve
state furniture,
register the
same, &c.

Shall keep a re-
gister of execu-
tive correspon-
dence.

Shall copy the
acts for the state
printer, make
indexes and
notes thereto,
and deliver them
for distribution.

Shall affix state
seal to pardons,
&c.

SEC. 4. That the said secretary of state shall give bond to and for the use of the state of Indiana, in the penal sum of two thousand dollars, with sufficient security, to be approved of by the governor, conditioned for the due and faithful performance of the several trusts to him committed; which shall be duly acknowledged and deposited by the governor, in the recorder's office of the county in which the seat of government is fixed, and there recorded; and a copy of such obligation, from the records of said recorder's office, shall be admitted as legal evidence, in any suit or suits that may or shall be brought against such secretary or his securities.

SEC. 5. That the secretary of state is hereby required to keep at the expense of the state a proper branding iron, on which shall be engraved the Roman capital letters P. S. I. (meaning the property of the state of Indiana) and shall well and sufficiently brand with said iron, all chairs, desks, tables, and other moveable wooden furniture now owned or which may be hereafter procured by the state of Indiana, on some conspicuous part thereof. And such branding iron shall be preserved in the office of the secretary of state, for such like purposes.

SEC. 6. That it shall hereafter at all times be the special duty of the secretary of state, to collect together in some proper place, all the chairs, desks, tables, ink-stands, ink-bottles, candlesticks, sand-boxes, and all other moveable property and furniture belonging to the state, and cause the same to be taken care of at all times, except when the general assembly may be using the same; and it shall moreover be the duty of the said secretary, to keep a book in which he shall register all and singular the number, name and description of the aforesaid articles of property.

SEC. 7. It shall further be the duty of the secretary of state to keep a complete register of all the official letters and correspondence, to, from and with the executive department of the state, in a sufficient, durable and well bound book, to be kept for that purpose. And he shall annually make a proper index, and full and sufficient marginal notes, to all the acts, joint resolutions and memorials of the general assembly, furnish the public printers with correct copies of all such acts, joint resolutions, memorials, index and marginal notes, in due time for printing the same; and shall duly superintend the printing; and correct the proof sheets of all such printing; and when such acts, joint resolutions and memorials, are printed and made ready for distribution, the said secretary shall forthwith, in a proper and sufficient manner, pack up the same, together with the journals of the senate and house of representatives, and deliver the same when so packed, to the distributors for distribution; and the said secretary shall, without delay, affix the official seal of the state to all reprieves, pardons, remissions of fines, penalties and punishments; and shall also perform all other duties which may, from time to time, be imposed on him by law.

SEC. 8. The secretary of state shall be and he is hereby allowed the annual salary of six hundred dollars, payable quarterly by warrants drawn on the treasurer, by the auditor of public accounts; and such annual salary shall be and is hereby declared to be, in full for all services rendered and to be rendered by such secretary of state; and that he shall not receive either perquisites or fees for any of his services as such secretary, except such fees as may be allowed him in the act regulating fees.

SEC. 9. That whenever the secretary of state shall, by reason of sickness, necessary absence, or inability, be prevented from discharging the duties of his office, his deputy or deputies, lawfully appointed under his hand and seal, shall and may execute all the duties which the said secretary could have lawfully executed in person till such disability be removed, and it is hereby made the duty of the secretary, by himself or his deputy or deputies, to attend at his office each day in the year, Sundays excepted, from the hour of ten until three o'clock.

AN ACT to amend the act entitled "an act to provide for the distribution of the laws and journals, and for other purposes," approved Feb. 19, 1831.

[APPROVED, FEBRUARY 17, 1835.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the general and special acts of the present and each subsequent session of the general assembly shall be printed in separate volumes.

SEC. 2. Of the general acts, there shall be printed annually four thousand copies, and of the local acts seven hundred and fifty copies.

SEC. 3. The secretary of state shall cause said acts to be stitched and bound in strong paper covers, in the same manner that the acts of congress are usually put up.

SEC. 4. There shall be hereafter printed annually three hundred copies of the journal of the senate, and three hundred copies of the journal of the house of representatives to be covered in the same manner that the acts are directed to be covered.

SEC. 5. The secretary of state is hereby directed to cause the volume of special acts to be printed without marginal notes.

SEC. 6. The said acts and journals shall be distributed as follows, to-wit: the general acts in the manner prescribed in the act to which this is an amendment; five copies of the special acts shall be forwarded to each county in the state, to be preserved in the clerk's office, one copy to each member of the general assembly, one copy to each of the persons named in the sixth section of the act to which this is an amendment, except the probate judges, and one copy to each of the states and territories of the United States; one copy of the journals of each house shall be forwarded to each member of the general assembly, one copy to each clerk's office, and one copy to each county library in the state.

Penalty for delaying the printing.

SEC. 7. That the public printers shall be liable to a penalty of ten dollars for each day that the printing is delayed beyond the time specified in the 2d section of the act to which this is an amendment, to be deducted by the secretary of state from the amount due said printers, at the time he shall certify their respective accounts: *Provided*, that the additional term of fifteen days be allowed the printer of the laws for the completion of his contract of the present year.

Alphabetical order dispensed with.

SEC. 8. The alphabetical arrangement sometimes observed in printing the acts is hereby dispensed with, and the public printers are authorized to commence the printing whenever they may see proper.

Record of date of the reception of the laws in several counties.

SEC. 9. The secretary of state shall cause to be entered on record in his office, the date when the laws are annually received at the respective clerk's offices in the state, as it may appear from the receipts of the respective clerks, and his certificates, under the seal of the state, shall be evidence of the fact, in any of the courts of this state.

This act to be in force from its passage.

CHAPTER XCVIII.

An Act relating to County Seminaries.

[APPROVED FEBRUARY 17, 1838.]

County board shall appoint seminary trustee, and his term of office.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the boards doing county business in the several counties in this state, (except as hereinafter provided,) shall at their first session in each year, appoint some proper person, as trustee of the county seminary in their respective counties, which trustee shall hold his office for the term of one year, and until his successor is appointed and qualified, and no longer, unless re-appointed.

Oath and bond of trustee.

SEC. 2. Said trustees, before entering upon the duties of their respective offices, shall make oath or affirmation, before some person legally authorized to administer oaths, faithfully to discharge the duties of their respective offices, according to law, and shall moreover give bond with security, to be approved of by the boards doing county business, payable to the state of Indiana, for the use of the county seminaries therein, in the penal sum of double the amount, as near as may be, of the seminary funds in such counties, conditioned for the faithful performance of all the duties enjoined on them by law, and for paying over all moneys, and delivering over all books, papers, bonds, bills, notes and effects, which may come into their hands as trustees as aforesaid, to their successors in office, at the expiration of their term of service; which bonds shall be filed with the clerks of said boards doing county business, and by them

Bond to be filed with clerk, and suit thereon.

recorded, and may be put in suit from time to time, until the whole penalties thereof may be recovered.

SEC. 3. Such trustees, when so appointed and qualified, shall demand of their predecessors in office, all moneys, papers, and effects appertaining to their said offices, and on failure or refusal of any such predecessor, to deliver up the same, when so demanded, suit shall be instituted therefor in the name of his successor, so as aforesaid appointed, against such delinquent; which suit may be by motion, (ten days notice thereof being given to such delinquent,) or by bill in equity, in the circuit court of the proper county; upon the hearing thereof, such court shall make such order and decree against such delinquent as may be deemed just and equitable: *Provided*, That no such proceeding shall bar a suit upon the bond of such delinquent and his sureties, for the same, or any other breach of duty.

SEC. 4. All officers in whose hands or possession there may now be, or hereafter come, any money or moneys set apart for seminary purposes, are hereby required to pay over the same to the trustee of the seminary fund of the proper county, within sixty days after the receipt thereof, taking such trustee's receipt therefor, which receipt shall be filed by such officer with the board doing county business in the proper county, and recorded by the clerk of such board.

SEC. 5. It shall be the duty of clerks of the circuit court, and all justices of the peace within this state, to make reports in writing to the boards doing county business in their respective counties, at the first session of said board, annually, setting forth clearly and succinctly, the names of all persons against whom fines have been assessed the preceding year, together with the amount and cause thereof, in said circuit courts, and before said justices, which reports shall be entered on record by the clerks of said boards.

SEC. 6. Should any officer in whose hands there now is, or may hereafter be, any moneys set apart for seminary purposes, neglect or refuse to pay over the same to the trustee of the seminary funds of the proper county, according to the provisions of the fourth section of this act, such trustee shall without delay, institute suit therefor, by motion in the circuit court of the proper county, after giving such delinquent ten days notice of the intended motion, and the court before whom the same shall be tried, shall in addition to the principal and legal interest which appear to be due, give judgment for ten per cent. thereon, together with costs of suit, and also six per cent. thereon, for the use of the attorney prosecuting the same, upon which judgment there shall be no stay of execution.

SEC. 7. It shall be the duty of the several trustees of county seminary funds in this state, appointed under this act, annually to lay before the boards doing county business in their several counties, at their first session in each year, a full and complete statement in writing, of the state of such funds, exhibiting the amount loaned, expended and on hand, which report shall be entered on record, and filed by the clerk of said board. Every trustee of seminary funds, appointed by the board doing county business in any county in this state, shall submit all

Trustees shall demand moneys and effects from predecessor, and for failure to deliver over suit by motion or in equity.

Proviso.

Holder of seminary money shall pay over to trustee.

Clerks and justices shall report to county board statements of fines, &c.

Suit vs. officer withholding payment from trustee.

Notice and motion vs. officer.

Judgment and per cent.

Trustee shall report to county board annually.

County board may inspect

trustee's books
and may remove
him from office.

Trustee may
loan money, be-
ing responsible.

Trustee shall
sue for money
loaned.

Trustee's com-
pensation.

District trustees
when to be elect-
ed, and term of
office.

Oath and bond
of district trust-
ees.

Bond to be filed
and recorded.

District trustees,
a body politic,
and their pow-
ers and duties.

his books, papers, and official transactions, to the inspection and examination of such board, whenever required, and shall be amenable to such board for the faithful and impartial discharge of his duties; and should any such trustee be found in any degree violating the trust reposed in him, such board shall have power to remove him from office and appoint a successor.

SEC. 8. It shall be the duty of the several trustees, appointed under the provisions of this act, to loan all moneys paid to them as such, for the term of one year, at any rate of interest not less than six per cent. per annum, taking bond and good security therefor, payable to themselves and their successors in office; and said trustees and their trustees, shall in all cases be held responsible for moneys so loaned, with the legal interest thereon.

SEC. 9. Such trustees are hereby empowered to prosecute suits against any and every person loaning money as aforesaid, so soon as the same shall become due, unto final judgment, upon which there shall be no stay of execution.

SEC. 10. The said several trustees so as aforesaid appointed, are authorized to retain in their hands respectively, as a full compensation for their services, three per cent. on all moneys that may come into their hands, and no more.

SEC. 11. So soon as the seminary fund shall amount to the sum of four hundred dollars, in any county in this state, the qualified voters thereof, may on any day of the general election in such county, and triennially thereafter, elect three trustees of the seminary of such county; but no such trustee shall be considered duly elected, unless a majority of the voters, voting in such county at such election, shall have voted for trustees as aforesaid: *Provided*, That in all cases where the voters of the county shall neglect or fail to elect trustees of county seminaries, the board doing county business shall appoint such trustees who shall in all things be governed by this act, and shall take the same oath and give the same bond and shall be a body politic and corporate with the same powers and obligations as though they had been elected.

SEC. 12. Such trustees, when so elected, as in the eleventh section of this act mentioned, before entering upon the duties of their offices, shall severally execute their bond in the penal sum of one thousand dollars, with security, to be approved of by the clerk of the circuit court of the proper county, conditioned for the honest and faithful discharge of all the duties of trustees of the seminary of such county, which bond shall be made payable to the proper county, for the use of the seminary of learning therein. Said bond shall be filed with, and entered of record by the clerk of the board doing county business in such county, and may be put in suit as often as occasion may require, until the whole penalty thereof shall be recovered.

SEC. 13. Such trustees, when duly elected and qualified according to the provisions of the foregoing section of this act shall form and constitute a body politic, with general powers and liabilities, similar to other corporations, subject however, to the peculiar object of its organization, under the name and

style of "The Board of Trustees of the County Seminary of — County," subject always to the limitations and directions of the general assembly of this state.

SEC. 14. Said board, when so organized, shall be vested with all the right, title and interest, in and to all moneys, bonds, notes, papers and effects of the county seminary of the proper county, and shall have power to hold real and personal property, for the use of a seminary of learning, to appoint a clerk, treasurer and other officers, being always responsible for their acts, and to do all other acts and things, not inconsistent with the constitution and laws of this state, necessary for the beneficial exercise of their functions.

SEC. 15. Such trustees, when so as aforesaid incorporated in any county, shall to all intents and purposes, in their corporate character, succeed to the trust vested in the seminary trustee appointed by the board doing county business therein, and may by bill in equity, in the circuit court of the county, coerce the delivery up of all books, papers, bonds, bills, notes, credits, moneys and effects in the hands of such trustee, and obtain such other relief as to the court may seem just and equitable: *Provided*, That suit may also be instituted on the official bond of such seminary trustee.

SEC. 16. Such board of trustees, in any county in this state, after being duly qualified, shall proceed as soon as practicable, to procure by purchase or donation, a suitable site whereon to erect an edifice for a public seminary in such county, securing a conveyance therefor in fee simple, by bond; which bond, together with a plat of such site, with the terms of such purchase or donation, shall, by such board of trustees, be laid before the board doing county business in such county, at its first session thereafter, and if approved of by said county board, it shall be deemed a *bona fide* contract and binding on both parties, and if such site be obtained by purchase, and sanctioned as aforesaid, such board of trustees shall discharge the amount of such purchase, out of any seminary moneys in their hands.

SEC. 17. Whenever the seminary fund in any county shall amount to four hundred dollars, after procuring a site as aforesaid, said board of trustees may contract for the erection of a suitable edifice upon such site, by letting the contract therefor, to the lowest bidder, after giving three week's notice of the time and place of selling such contract, together with a plan of the proposed building, by publication in some newspaper, if any there be in such county, if not, by posting up written notices in six of the most public places in the same.

SEC. 18. Said board of trustees shall take bond and good security, with a sufficient penalty to cover all damages that may accrue by reason of the non-performance of the contract, from the person buying such contract, conditioned for the faithful execution of the work; which bond and contract shall be filed in the office of the clerk of the board doing county business in such county, and there entered on record.

SEC. 19. Such board of trustees are hereby authorized to pay such contractor or contractors, out of any seminary mo-

Corporate style.
General powers
of board of trust-
ees.

Powers and du-
ties of seminary
trustee transfer-
red to board of
trustees.

Board of trust-
ees may pur-
chase land, erect
seminary, make
contracts &c.

Board may con-
tract for semi-
nary edifice
when the fund
amounts to 400
dollars, & how.

Bond of con-
tractor to build.

Board shall pay
contractor, ac-
cept building,
&c.

neys in their hands, according to the terms of the contract; and on the faithful completion of said building according to agreement, to receive the same, which, when so received, shall be open and free for public schools, and in which shall be taught any branches of literature authorized by the trustees thereof.

Record or proceedings to be kept and report to county board made.

SEC. 20. The board of trustees in all counties where seminaries have been established, or may hereafter be established, shall keep a complete record of all their proceedings in books, procured and kept for such purposes, always subject to the inspection and examination of the boards doing county business therein, and shall annually make a detailed report to said county board, exhibiting the true situation of their seminary, the debts and credits of such institution, the amount of money on hand, the number and character of the schools therein, and all other important facts connected with their operations; which reports shall be spread at length upon the records of such county boards.

County boards shall also record seminary rep'ts.

Clerk shall annually make statement to pros. attorney, who shall forward a copy to the speaker of the house of representatives.

Board of trustees may loan money.

Board of trustees may collect debts as seminary trustee might.

A majority of the board may act.

Seminaries shall be permanent.

Triennial elections of trustees and their powers.

SEC. 21. The boards doing county business in all counties where there may be now or hereafter, any seminaries established under the provisions of this or any other act, shall keep proper books, in which shall be entered and recorded, all reports and proceedings connected with such seminaries; and it is hereby made the duty of the clerks of the several boards doing county business in such counties, to present to the prosecuting attorney therein, at the fall terms of the circuit court annually, a complete statement of the situation of such seminaries so far as they are enabled to do it, from their records, a copy of which statement shall be transmitted to the speaker of the house of representatives by said attorney.

SEC. 22. All moneys in the hands of any board of trustees incorporated as aforesaid, not used in the erection and support of the seminary of their proper county, shall be loaned upon the same conditions on which loans are provided to be made by seminary trustees appointed by boards doing county business.

SEC. 23. Such board of trustees in any county in this state, are hereby vested with the same powers in recovering seminary moneys and effects, that are granted to trustees of seminary funds appointed by boards doing county business, and shall in all cases be amenable to the board doing county business in the proper county, for the faithful discharge of all their business.

SEC. 24. A majority of any board of trustees, elected and qualified according to the provisions of this act, shall have full power to transact any business relating to their proper seminary.

SEC. 25. Any seminary or seminaries of learning, established in any county or counties in this state, shall remain permanent, after the taking effect of this act, and it shall be the duty of the qualified voters in any such county or counties, on the day of the next general election, and triennially thereafter, to elect trustees of such seminary or seminaries, as provided in the eleventh section of this act; which trustees, after being duly qualified according to the provisions of this act, shall be vested with all the powers and rights delegated to other trustees,

tees, by this act. And all acts heretofore done under and pursuant to any other act or acts, by the present managers of any such seminary, are hereby declared legal and valid to all intents and purposes.

Former acts of seminary trustees legalized.

SEC. 26. A majority of the board of trustees of any seminary, now or hereafter established, shall have full power, from time to time, to make such by-laws and regulations in writing, not inconsistent with the constitutions and laws of this state and the United States, as to them shall appear necessary for the good government of such seminary.

Board of trustees may make by-laws.

SEC. 27. It is hereby made the duty of the prosecuting attorneys of the several judicial circuits in this state, to attend to all suits and prosecutions instituted by or against any trustee or board of trustees, in their official or corporate characters, in their several circuits; for which they shall be paid the sum of five dollars, to be taxed with the other costs in the suit, provided the judgment or decree is in favor of such trustee or trustees suing in behalf of the state.

Pros. attorney shall conduct all suits involving seminary rights.

SEC. 28. Any vacancy that may occur in any board of trustees, in any county of this state, by the death, resignation or removal from office, of any member of such board, shall be filled by appointment made by the board doing county business therein; and such person so appointed, shall be subject, before entering upon the duties of his office, to give bond in the same manner as other trustees, and shall hold his office until a successor shall be elected, at the next general election, and duly qualified.

Vacancies to be filled by county board.

SEC. 29. The trustee or trustees of any county seminary in this state, are authorized to draw on the state treasury, for their several proportions of the moneys arising from the fines collected from persons conscientiously scrupulous of bearing arms; and the treasurer of state is hereby directed to pay the same.

Trustees may draw for conscientious fines.

SEC. 30. The circuit courts of the several counties in this state, shall have jurisdiction in all matters relating to the seminaries thereof, and upon the relation of the board doing county business in any county, shall take cognizance of, and inquire into the management of the seminary affairs, by any board of trustees, and pass such orders and decrees for the preservation and correct disposition of all funds and effects of such seminary, as their discretion shall direct; and should any member or members of any board of trustees incorporated by this act, be guilty of any wilful and corrupt official misconduct, said court may remove such member or members from office: *Provided, That* the provisions of this act shall not affect any special acts, relative to county seminaries, now in force.

C. court shall adjudge in regard to seminary matters &c.

Penalty vs. trustee for violation of duty.

Proviso as to special acts in force.

SEC. 31. In all cases where fines are assessed against any person in this state, the proceeds of which go to the use of the county seminary, the receipt of the trustees of such county seminary, or other persons authorized to receive the same for such fines, shall in all cases be a sufficient release from such liability.

Receipt from seminary trustees shall be sufficient for fines paid.

CHAPTER XCIX.

AN ACT to provide for the commissioning of Sheriffs and Coroners, and to regulate their duties.

[APPROVED JANUARY 7, 1824.]

Commissions to be forwarded to clerks.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be the duty of the governor, as soon as the nature of the case will admit, to commission the several persons returned as elected for sheriffs or coroners in the several counties in this state; which commissions he shall cause to be forwarded to the clerks of the circuit courts in the several counties, where such sheriffs or coroners shall respectively reside.

Clerk to notify &c.

SEC. 2. It shall be the duty of the clerk of the circuit court in each county, on the receipt of a commission for sheriff or coroner, to give notice thereof to such person so commissioned, to come forward and give bond and security for the faithful discharge of the duties of his office.

Sheriff's bond.

SEC. 3. It shall be the duty of the clerk of the circuit court to take of the sheriff elect, a bond with two or more securities, to be approved by the two associate judges, in the sum of five thousand dollars, payable to the state of Indiana, conditioned for the faithful discharge of his duty, and for the safe keeping and delivering over according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office; and of the coroner elect, in the sum of two thousand dollars, payable as aforesaid, for the faithful discharge of his duty, and for the safe keeping and delivering according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office; which bonds shall be forthwith recorded in the recorder's office, and filed in the clerk's office of the county in which they are taken; and it shall be the duty of each of the clerks of the circuit courts, on the same being filed in his office, to transmit a certified copy thereof, to the office of the secretary of state, to be by him preserved. And in all motions or suits to be made or brought upon such bond, against any sheriff or coroner, in the name, or for the use and benefit of the state, or any individual thereof, such copy filed as aforesaid, shall be sufficient evidence of the existence of such bond, and the same proceeding may be had thereon, as on the original bond.

Bonds recorded and filed

Clerks transmit a certified copy of bond to the office of secretary of state.

Oath.

SEC. 4. The clerk of the circuit court, is hereby authorized to administer to every person, who is commissioned sheriff or coroner, after such person has given bond and security as required by this act, the several oaths or affirmations required by the constitution and laws of this state, which he shall certify on the back of such commission, and file a copy of such certificate in his office, which commission so certified, shall be sufficient authority for the person thus qualified, to perform all the duties that belong to his office.

SEC. 5. Sheriffs and coroners shall be commissioned to ^{Term 2 years.} serve two years from and after the time of their election, and until their successors are chosen and qualified.

SEC. 6. Whenever the general assembly shall lay off a new ^{Governor appoint a sheriff and coroner in new counties.} county, the governor shall appoint and commission a sheriff and coroner to act as such, until the next general election, and until successors are chosen and qualified.

SEC. 7. Hereafter when the office of sheriff or coroner of ^{Vacancies, how filled.} any county, shall become vacant, by death, resignation, removal from office, neglect or refusal to give bond and security as required by this act, or refusal to qualify, it shall be the duty of the governor, to appoint and commission some suitable person resident of the county, to fill such vacancy, until the next general election, and until a successor be duly elected and qualified into office.

SEC. 8. When appointments shall be made of sheriffs and coroners in any new county, the person so appointed shall give ^{Persons appointed in new counties, and to fill vacancies, give bond, &c.} bond and security, in the sum and manner pointed out by the governor; all persons appointed to fill vacancies in said offices, shall give bond and security, and take the same oath, as in other cases of sheriffs or coroners; and it shall be the duty of the governor, at the time he shall make any appointment as aforesaid, to issue a writ of election, directed to the sheriff of the proper county, requiring him to give ten days' notice of the election of such officer at the next general election: *Provided*, where any vacancy as aforesaid shall take place in any county, immediately preceding a general election, and when no special appointment shall have been made, it shall be the duty of the sheriff or coroner, as the case may be, to give notice of the same, and to cause a poll to be opened for the filling of such vacancy.

SEC. 9. The coroner shall perform the duties of sheriff in ^{Coroner in certain cases shall perform the duties of sheriff.} all cases where the sheriff is interested or prejudiced; and also in case of vacancy by death, resignation or otherwise in the office of sheriff, the coroner shall perform the duties of such office, until a sheriff is appointed or elected, and qualified according to the provisions of this act.

SEC. 10. That it shall be the duty of each and every sheriff and coroner to keep the peace, by causing all offenders against law in their view, to enter into recognizance with securities, to appear at the next circuit court in the county, on the first day of the term thereof, and in case of refusal, to commit to the common prison; which recognizance shall be certified and returned by the sheriff or coroner, on or before the first day of the next term. It shall also be their duty to quell and suppress affrays, riots, and insurrections, for which end they shall and are hereby authorized and empowered, to call to their aid the power of the county. They shall pursue and commit to jail, all felons and traitors; they shall execute all warrants, writs and process, which by law shall appertain to the duties of their office, and which shall be directed to them by legal authority. The sheriff shall duly attend to all courts of record, at their respective terms or sessions in his county, shall have

Sheriffs and coroners, their duties.

Deputy.

the custody of the jail thereof, and shall also do and perform all other duties that are or shall be enjoined on him by law; and sheriffs may transact any part of their official duties by deputy, being accountable for the acts of such deputy.

Sh'ffs out of office may collect taxes, &c.

SEC. 11. That the sheriffs, who may have resigned, or whose term of service may have expired, shall be and they are hereby authorized to proceed in the collection of taxes, fee-bills, fines and executions which were due them at the time their said offices were vacated, under the same rules and regulations by which they were authorized by virtue of their respective commissions; provided such authority shall not extend to a longer term than two years.

Their acts legal.

SEC. 12. That all acts of sheriffs whose term of service has expired, by resignation or otherwise, in collecting taxes, advertising real estate for sale for taxes, sale thereof, making deeds or giving certificates of real estate, to the purchasers thereof, on sale for the non-payment of taxes, shall be legal, and are hereby legalized in all respects, as though the same had been done by their successors in office: *Provided*, such collection and sale shall have been conducted in all other respects, agreeably to the laws of this state.

Sh'ffs shall serve and return process of supreme court.

SEC. 13. It shall be the duty of the sheriffs in their respective counties, to serve, execute and return all process to them directed by the supreme court, in the same manner, as process issued by the circuit courts, for which they shall be entitled to similar fees.

May call persons to his assistance.

SEC. 14. Any person or persons called upon by any sheriff or other officer to assist in the execution of his office, and failing to obey when so called, shall, unless he shews sufficient cause for not obeying, be fined, by any court having competent jurisdiction, on indictment, and being found guilty by a jury, in any sum not exceeding fifteen dollars.

Coroner notified of dead body, how to proceed.

Jury.

SEC. 15. Every coroner, as soon as he shall be notified of the dead body of any person supposed to have come to his or her death by violence or casualty, found or lying within his county, shall make out his warrant directed to the constable of the township, where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men of the said township, not less than fifteen in all, so that twelve may be present, to appear before such coroner, at the time and place expressed in his warrant, and to inquire upon view of the body (name here the person deceased, if known) there lying dead, how and in what manner, and by whom, he or she came to his or her death; and every constable to whom such warrant shall be delivered or directed, shall forthwith execute the same, and shall repair to the place, where the dead body is at the time mentioned, and make return of the warrant, with the proceedings thereon, unto the coroner who granted the same; and every constable failing to execute such warrant, or to return the same as aforesaid, shall forfeit and pay the sum of three dollars; and every person summoned as a juror aforesaid, that shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding three dollars; which fine shall be

recovered by action of debt before any justice of the peace in the proper township, and be applied to the use of the county seminary.

Oath of jury.

SEC. 16. The coroner shall administer an oath or affirmation to twelve of the jurors that shall appear, to the foreman first, in the following manner: "You do solemnly swear, or affirm, (as the case may be,) that you will diligently inquire and true presentment make, how and in what manner, and by whom A B, who here lies dead, came to his death, and that you will deliver to me, the coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to the best of your knowledge. So help you God."

SEC. 17. The other jurors shall swear or affirm (as the case may be) in the following form: "Such oath or affirmation as your foreman hath now taken before you on his part, you and each of you will keep and observe on your respective parts. So help you God."

Charge.

SEC. 18. The jurors being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person, whether he or she died of felony or mischance, or accident, and if of felony, who were the principals, and who were accessaries, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption; and if by mischance or accident, whether by the act of man, or whether by hurt, fall, stroke, drowning or otherwise; also, to inquire of the persons, who, if any were present, of the friends of the body, his or her relatives and neighbors, whether he or she was killed in the same place where the body was found; and if elsewhere, by whom and how the body was brought thence, and of all other circumstances relating to said death; and if he or she died of his or her own felony, then to inquire of the manner, means or instrument, and of all other circumstances concerning it.

Proclamation.

SEC. 19. The jury being charged, shall stand together, and proclamation shall be made for any persons, who can give evidence, to draw near, and they shall be heard.

Witnesses.

SEC. 20. Every coroner is farther empowered to send his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question; he shall administer an oath or affirmation to them in the following form: "You do solemnly swear or affirm, that the evidence you shall give to the inquest, concerning the death of A B, here lying dead, shall be the truth, the whole truth, and nothing but the truth: So help you God."

Witnesses may be recognized.

SEC. 21. The evidence of such witness shall be in writing, subscribed by him, and if it relates to the trial of any person concerned in the death, then shall the coroner bind such witness or witnesses by recognizance, in a reasonable sum, for their personal appearance at the next circuit court to be holden within the same county, there to give evidence accordingly; and commit to the common jail of said county, any witness or witnesses refusing to enter into such recognizance; and shall return to the same court; such inquisition, written evidence and recognizance

Verdict.

by him taken; and the jury having viewed the body, heard the evidence, and made all the inquiry within their power, shall draw up and deliver to the coroner, their verdict upon the death under consideration, in writing under their hands and seals.

In case of felonious homicide coroner shall inform a justice.

SEC. 22. Upon an inquisition found before any coroner, of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the justices of the same county thereof, to the intent, that the person killing or being in any way instrumental in the death, may be apprehended, examined and secured in order for trial.

Coroner unable to attend, justice may hold inquest.

SEC. 23. In every case where the coroner shall be absent from the county, or unable to attend, it shall be lawful for any justice of the peace of the proper township, to hold an inquest over any dead body; which justice shall proceed in all respects as coroners are directed to do by the foregoing provisions.

AN ACT to amend an act entitled "an act to provide for the commissioning of sheriffs and coroners, and to regulate their duties," approved Jan. 7, 1824, and for other purposes.

[APPROVED FEBRUARY 3, 1832.]

Repeal.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That so much of the tenth section of the act to which this is an amendment, as requires sheriffs and coroners to recognize persons to the circuit court, for crimes cognizable by justices of the peace, be, and the same is hereby repealed.

Sheriffs and coroners making arrests, shall take offenders before j. p. &c.

SEC. 2. That it shall be the duty of the sheriffs and coroners, on making any arrests, as set forth in the tenth section of the act to which this is an amendment, to take such person or persons before some justice of the peace of his county; and it shall be the duty of such justice to hear and adjudicate on the same, under the same rules and regulations, as set forth in the first section of the act regulating the jurisdiction and duties of justices of the peace, approved February 10, 1831.

May serve process issued by j. p.

SEC. 3. That it may be lawful for any sheriff or coroner, making such arrest, to serve all process issued by the justice pursuant to the same, and to execute any order of said justice relative to the trial of the same, and be entitled to receive the same fees that are now allowed in like cases, before justices of the peace.

AN ACT to amend an act entitled "an act to provide for the commissioning of sheriffs and coroners, and to regulate their duties," approved Jan. 7, 1824.

[APPROVED JANUARY 27, 1837.]

Coroner's inquest.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in addition to the duties now required of coroners, by the act to which this is an amendment, when holding an inquest over any dead body, which may be found in

their respective counties, it shall be and is hereby declared to be their duty to require the jury empannelled, to examine and report, signed and sealed by said jurors and said coroner, with the verdict of said jury, a minute and particular description of the person deceased, together with the name of the said deceased, if the same can be ascertained, and the amount of money, property, or other valuables found with the dead body of the said deceased, which amount of money or other property, shall be placed in the hands of the treasurer of the county in which said body may be found, and by him paid over to the person or persons authorized to receive the same, if any there be who may call therefor: *Provided*, that it shall, and is hereby made the duty of the treasurer, if the money aforesaid should not be called for, to loan out the same at an interest of not less than eight per centum per annum, to be applied to common schools, equally divided among the townships of said county: *Provided also*, that it shall be the duty of said coroner to publish in some public newspaper printed nearest thereto, the description and name of the deceased, if the same can be ascertained, and the amount of money, property, or other valuables, found in the possession of the said deceased.

Minute description of the person.

Coroner to give notice in newspaper.

SEC. 2. If any coroner shall refuse or fail to pay into the hands of the treasurer of any county, the money or other property which may come into his hands as aforesaid, it shall be, and is hereby made the duty of said treasurer, to sue for and collect the same before any court having competent jurisdiction within the county.

Cor. refuse to pay over money found, &c.

SEC. 3. In the absence of any coroner, the justice of the peace, acting as such, shall in all respects be governed by the conditions of this act.

CHAPTER C.

AN ACT to provide for the safety of stage passengers.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall not be lawful for the driver of any stage coach or stage wagon, for the conveyance of passengers, for hire or reward, to run his horses to pass any stage coach or stage wagon; nor to run his horses to prevent being passed by any other stage coach or stage wagon; nor to run his horses for any other purpose whatever when it shall appear eminently dangerous to the passengers in such stage coach or wagon; nor to leave the horses attached to any such stage coach or wagon while passengers remain in the same, without first making his horses fast with some halter, rope or chain, or by placing the reins in the hands of some other suitable person to prevent their running. And if any such driver shall so offend against the provisions of this act; he shall forfeit and pay for

Penalty on stage drivers for neglect of duty.

every such offence a sum not less than five nor more than twenty dollars, to be recovered before any justice of the peace of any township where the offender may be found; in the name and for the use of the person who shall first make complaint and prosecute with effect for the same: *Provided*, that such prosecutions be commenced within thirty days from the time of the committing of such offence.

Each stage shall be provided with lamps.

SEC. 2. That every stage coach used for the conveyance of passengers in the night time for hire or reward shall have affixed to the same in the usual manner two good and sufficient lamps; and if said coach shall be at any time unfurnished for the space of forty eight hours together without two good and sufficient lamps as aforesaid, the owner or owners of said coach shall forfeit and pay for every such offence, not less than ten nor more than thirty dollars; to be recovered in all respects by the person and in the manner prescribed in the first, fourth and fifth sections of this act.

Penalty for driving without lighting lamps

SEC. 3. That if any driver of any such coach furnished with sufficient lamps in the usual manner, shall drive such coach in the night time, when the road or track cannot be distinctly seen from the driver's seat, without having first lighted up said lamps, and continuing them lighted during the night, he shall for every such offence forfeit and pay a sum not less than five nor more than twenty dollars, to be recovered in all respects according to the provisions of the first section of this act.

Penalty on driver being intoxicated.

SEC. 4. If any driver whilst actually employed in driving any such stage or wagon shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers therein, it shall be the duty of the owner or owners of such coach or wagon on written notice of the fact being given to him or them or his or their authorized agent, signed by one of said passengers and certified by him on oath, forthwith to discharge such driver from his or their employment, and every such owner or owners who shall continue such driver, in his or their employ for more than three days after such notice shall be given as aforesaid, shall forfeit at the rate of five dollars per day for all the time during which he or they shall keep any such driver in his or their employment after such notice shall have been given; to be sued for and recovered before any justice of the peace of any township where such owner or owners may be found, by action of debt in the name and for the use of the person who shall first institute the suit.

Trial and judgment.

SEC. 5. That any person prosecuting as aforesaid may sue out either a summons or capias at his election, and if personal service be made, each party shall have a right to a trial forthwith, unless for good cause shewn the justice shall think proper to grant an adjournment; and upon any judgment which may be rendered thereon there shall be no stay of execution but the same shall forthwith issue and be served and returned as in other cases: *Provided*, that in all cases under the provisions of this act appeals shall be allowed as in other cases.

SEC. 6. That the owner or owners of any such stage coach

or stage wagon shall be jointly and severally liable for the amount of any judgment recovered as aforesaid against any driver in his or their employ; if such driver shall abscond, or fail to make satisfaction of such execution within thirty days from the date thereof, to be recovered in an action of debt founded on such judgment in the name of the original plaintiff and prosecuted against any one or more of such owners, on which judgment, stay of execution and other proceedings shall be had as in other cases, unless an appeal shall have been perfected in the original cause.

Owners, how liable.

SEC. 7. If any owner or owners of any such stage, wagon or coach shall voluntarily pay any judgment rendered against any driver in his or their employ as aforesaid, such owner or owners shall have a right to collect the amount so paid from such driver with interest thereon; and may also offset the same against any demand which such driver may have against such owner or owners or any of them.

Owners may collect judgment from driver.

SEC. 8. The owner or owners of any stage coach, or wagon used for the purposes aforesaid, shall, by the first day of July, 1838, put and keep up in each of their offices, a fair copy of this act; and for failure or neglect to do so, he or they shall forfeit and pay the sum of five dollars to be recovered in the manner prescribed in the 4th section of this act.

Copy of this act to be put up in stage office.

SEC. 9. This act to take effect and be in force from and after the first day of June next.

CHAPTER CL.

AN ACT regulating the mode of keeping Stallions and Jacks.

[APPROVED, FEBRUARY 17, 1833.]

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall not be lawful for any person to keep, or let to mares any stallion or jack, within the limits of any town or village, in the state, or within two hundred yards thereof, unless such person shall provide an enclosure so arranged as to obstruct the view from all the inhabitants in the town and vicinity as aforesaid. Any person so offending, shall upon conviction thereof, on presentment or indictment, be fined ten dollars for every such offence.

Mode of keeping stallions and jacks.

CHAPTER CII.

AN ACT for the regulation of the State Prison.

[APPROVED FEBRUARY 17, 1838.]

State prison established at Jeffersonville.

Gov. shall farm out prison.

Superintendent, his powers and duties.

Gov. shall give notice of letting of prison.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the lot of ground, together with all the buildings and improvements thereon, and the appurtenances thereunto belonging, situate in the town of Jeffersonville in the county of Clark, heretofore established and used as a state prison, shall be, and the same is hereby continued as such, in which all convicts sentenced under the penal laws of this state to hard labor, shall be confined and kept; and shall be henceforth managed and conducted, under the directions and regulations hereinafter prescribed.

SEC. 2. It shall be the duty of the governor to farm out the said prison, together with all the stock, tools, materials, prisoners, and every thing belonging thereto, or in any way connected therewith, to some responsible person, by contract in the manner hereinafter mentioned, for such period not exceeding five years, as to him may be deemed most conducive to the benefit of said institution and the interest of the state; and if possible, on such terms as will prevent the same from becoming chargeable to the state; and the person to whom the same may be so let, shall be styled "the superintendant of the state prison of Indiana," who shall receive the charge of the same, and be invested with the sole and entire management and control thereof, and all its concerns during the term he may farm the same, subject to such regulations and restrictions, as may from time to time be established by law; and shall at his own expense, furnish the same with all the stock and materials necessary for carrying on the business thereof; clothe, feed, and lodge the convicts, appoint his own guards and keepers, and the same dismiss at pleasure; and in short, shall be bound for the entire charge of keeping up said institution, so as to keep the state wholly indemnified and not liable to any expense for the same, except for such repairs as may become necessary to be made to the same, and all the proceeds thereof shall take to his own use; but as a consideration for the use and benefit of said institution, shall pay into the state treasury for the use of the state of Indiana, such sum of money and on such conditions as may be agreed upon between him and the governor for that purpose.

SEC. 3. Previous to farming out said prison, the governor shall give six weeks public notice by advertisement, to be published in the newspapers printed at Indianapolis, that he will on a day certain, to be named in such notice, receive sealed proposals, for farming out of said prison, which sealed proposals shall be accompanied with the names of the securities who may be willing to be responsible for the faithful performance of

such contemplated contract, and satisfactory vouchers of the personal character and capacity of the proposed contractor; on the reception of which, and on the day named in such published notice, the governor shall, in the presence of the secretary of state, auditor and treasurer, open such sealed proposals, and with the advice and concurrence of the said officers, or a majority of them, determine which of the said proposals, if any, it is for the interest of the state to accept; and upon such determination being had, it shall be the duty of the secretary of state forthwith to notify the proposed contractor of the acceptance of his proposal, and proceed to have the contract consummated in due form; *Provided*, that nothing in this act shall be so construed as to affect existing contracts in regard to the state prison.

SEC. 4. The said person to whom the said prison shall be so let as aforesaid, shall, by and under the name and style aforesaid, be capable both in law and equity, to sue and be sued, plead and be impleaded, in all or any of the courts of this state; and under such name shall make all contracts, and carry on all his transactions relative to the management of said prison, and which shall have like validity, and be enforced in the same manner, as if made by him in his individual capacity.

SEC. 5. The said superintendant, at the time of making said contract, shall enter into bond, payable to the state of Indiana, in the sum of ten thousand dollars, with six responsible freeholders as his securities, to be approved of by the governor, which bond shall be taken by the governor and attested by the secretary of state, and by the latter shall be filed in the office of the secretary of state, conditioned for the faithful performance of his duties as such superintendant, according to law and for the fulfilment of the contract, which shall be so entered into between him and the governor, for the farming of said prison; and at the same time it shall be the further duty of the said superintendant to take an oath or affirmation, faithfully to discharge his duties as aforesaid according to law, which oath or affirmation, the secretary of state is hereby authorized to administer, and shall be by him endorsed on the back of said superintendant's appointment, and also on the back of his official bond.

SEC. 6. The said superintendant shall keep a journal of the transactions of said prison, and of all the accounts thereof, which he shall enter in well bound works, to be by him procured for that purpose, and shall also keep an account, shewing the situation of said prison, and report the same to the secretary of state, on the first Mondays in July and December of each and every year.

SEC. 7. Said superintendant shall keep a book of sufficient size for that purpose, well bound of good lasting materials, with a suitable index thereto, in which he shall enter the name, trade, or occupation, age, size, complexion, and a complete description of every prisoner, the day of his entry, and when the period of his confinement will expire, the offence for which he may be confined, the county in which he was convicted, and the place of his nativity, semi-annual transcripts

from which he shall make out and transmit to the office of the secretary of state, at the same time he transmits the semi-annual returns herein provided for.

Books &c. to be delivered over to successor.

SEC. 8. It shall be the duty of every person, who may become the superintendent of said prison, as herein provided for, when his term shall expire, to deliver over to his successor, or whoever may be appointed by law to take charge of the same, all the books, papers, moneys and prisoners, together with the property belonging thereto, of every description, in good order and in the same condition he shall have received the same, except the natural use and wear thereof.

Visitor how and when appointed

SEC. 9. It shall be the duty of the governor, yearly, in the month of February, to appoint some suitable person who does not reside in the town of Jeffersonville or its vicinity, as a visitor of the state prison, who shall be paid fifty dollars per annum, out of the state treasury, for his services.

SEC. 10. It shall be the duty of such visitor to visit the prison, at least semi-annually, examine whether there be any violation of the existing laws, at the time of such examination; for the more effectual performance of which he shall have the right to examine into all, and particularly the concerns, books and departments of said prison, with full power to send for persons, papers and books, to swear witnesses and take down evidence, and to examine the persons collectively or separately.

Duty of visitor.

SEC. 11. Said visitor shall, once in six months at least, and as often as there is any cause of complaint, certify to the governor a minute detail of all the regimen, discipline, food, apparel, labor, punishment, care of the sick, cleanliness, or otherwise, bedding, lodging, instruction, and every other thing mentioned by law, or that said visitor may deem worthy of observation appertaining to the said prison or prisoners, as near as he can satisfy himself of the same, together with the sources of his information.

Prisoners to be supplied with bibles.

SEC. 12. It shall be the duty of the superintendent to purchase at the lowest wholesale price, from time to time, a sufficient number of the cheapest well bound bibles and testaments, to supply the prisoners that are in said prison, or that may be likely to be therein, in the space of one year after such purchase, and each prisoner who is in the prison that can read, shall be immediately presented with one bible and testament; and each prisoner that may learn to read in the prison, shall immediately thereafter be presented with a bible and testament, which books shall become the absolute property of such prisoners on their discharge from said prison.

Preaching to be admitted on Sabbath.

SEC. 13. On the first day of the week, called the Lord's day, it shall be the duty of the superintendent to suffer preachers of the Gospel of any christian denomination, if he deem it expedient, to preach to the prisoners at such hours as not to interfere with any Sunday school regulation within said prison.

Prisoners may be instructed.

SEC. 14. Such superintendent shall suffer such religious and philanthropic persons, as may offer their services, and who he believes act from pure and disinterested motives, to come into the prison on Lord's days to teach the prisoners to read,

and instruct them in a knowledge of the scriptures, and to distribute among them religious tracts, and other religious books, which tracts and books shall first be inspected by the superintendent, and be by him approved, before they shall be given to the prisoners.

SEC. 15. It shall be the duty of the superintendent, to cause each prisoner during each night to be kept separate from all others, and they shall not be permitted to speak to one another during the night; and it shall further be an established part of the prison discipline, that all conversation between the prisoners shall be prohibited, so far as is practicable during the day, and while they are engaged at their labors and meals.

Prisoners to be kept in separate cells during night.

SEC. 16. That all persons convicted under the laws of the United States, and sentenced to confinement at hard labor or otherwise, by any court within this state, may be confined within the state prison of this state; and it shall be the duty of the keeper or superintendent of said prison, to receive into his custody, all such persons sentenced as aforesaid when delivered to him by the proper officer, and to keep them in said prison, according to the terms of their sentence, in the same manner, and subject to the same rules and regulations prescribed for keeping prisoners therein, sentenced under the penal laws of this state, until such convicts shall be discharged by due course of the laws of the United States; the United States being responsible for all expenses attending the same.

Prisoners convicted under the laws of the U. S. may be confined in state prison.

SEC. 17. And be it further enacted, That Samuel Peck of Washington county be, and he is hereby appointed a commissioner on the part of this state, to contract with some competent and responsible person or persons for the extension and improvement of the state prison as directed by the provisions of this act.

Samuel Peck appointed com'r to erect buildings.

SEC. 18. Said commissioner is hereby authorized, after giving at least thirty day's notice of the time and place, in the "Jeffersonville Courier," that he will receive sealed proposals for the erection upon the ground belonging to the state at the north end of the existing prison, to be connected with it, and as an extension of the same, another building two hundred and ten feet in length and of corresponding width and height with the existing building, and similar thereto in every respect, with one row of cells in the second story—the row of work-shops on the east side of the prison to be extended to the north line of the public ground, (being 210 feet) to correspond with the row of shops already erected; the building to be connected by a wall across the north end; which wall together with that at the opposite or south end, and that on the east side to be at least twenty-five feet high; and the whole to be erected of good brick and other corresponding materials, and to be executed in a workmanlike manner.

Notice of proposals to erect buildings.

Dimensions of buildings.

SEC. 19. Said building to be commenced the ensuing spring, and shall be completed as soon as practicable; and said commissioner shall, when said buildings and improvements are completed according to contract, give said contractors a certificate thereof, which certificate when presented to the superin-

Building when to be commenced and completed.

Contractor how paid.

Com'r may alter plan &c.

3 dollars to be given to prisoner when discharged.

Compensation to commissioner

tendants of the state prison, shall be by them paid upon presentation, to said contractor or contractors, as the case may be, which certificate shall entitle said superintendants to credit on their bonds to the state for the amount specified in such certificate: *Provided*, That in case any payment becomes due on the bond of said superintendants before the completion of said work, the commissioner is hereby authorized to certify what amount of work has been performed, and the amount so certified shall operate as a credit on said bond for the time being.

SEC. 20. Said commissioner in making the contract in this act authorized, may make such changes and alterations in the plan of the improvement, as in his judgment may be calculated to advance the interest of the state, not however allowing in any event a higher price for the work on said prison than is usual for work of like description in the town of Jeffersonville.

SEC. 21. At the time of the discharge of any prisoner, who shall have served out the full time for which he was committed, it shall be the duty of the superintendant of the state prison, to give such convict three dollars; and the amount so paid shall be stated from time to time in the semi-annual report to the secretary of state, and shall entitle the superintendant to a credit on settlement with the state for the amount thereof.

SEC. 22. The commissioner appointed by the seventeenth section of this act shall be allowed two dollars per day for the time he is necessarily employed in discharging the duties of his appointment; which shall be allowed and paid at the treasury upon his certificate verified by affidavit before any person authorized to administer oaths.

SEC. 23. Should said commissioner refuse to act, resign, or die, it shall be the duty of the governor on information thereof, to appoint some other suitable person to perform his duties herein required.

SEC. 24. *And be it further enacted*, That Samuel Peck, the commissioner appointed under the provisions of this act be, and he is hereby appointed visiter of the state prison for the year commencing February, 1838, who shall perform all the duties and receive the same compensation as is provided by the ninth and tenth sections of this act, and the power vested in the governor by the said ninth section appointing the visiter aforesaid, is hereby suspended till February, 1839.

SEC. 25. This act to be in force from and after its passage.

CHAPTER CIII.

An Act for the appointment of County Surveyors and their Deputies.

[APPROVED FEBRUARY 4, 1831.]

Surveyors to be appointed by county board.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That a surveyor shall be appointed in each and every county, by the boards doing county business in their re-

spective counties, who shall receive a certificate of his appointment, attested by the clerk of the board, whose duty it shall be to record said appointment in the record books of his county. He shall reside within the county for which he shall have been appointed, and before entering on the duties of his office, shall take an oath, faithfully to discharge the same, and give bond to the state of Indiana, with two sufficient securities to be approved of by the clerk of the circuit court of the proper county, in such sum as said clerk may direct, for the faithful execution of his office.

Oath and bond.

SEC. 2. The principal surveyor, shall have power to nominate and appoint a sufficient number of deputies, to perform the duties of his office, and shall be accountable for their acts.

May appoint deputies.

SEC. 3. Whenever hereafter, any dispute may arise about the division of any lands, wherein the surveyor of the county where the lands lie, may be a party, or in any manner interested, it shall be lawful for the circuit court, on application of either party, to appoint some suitable person in said county, whose duty it shall be to proceed to divide the same, for which service the person so appointed shall be entitled to the same fees, as county surveyors are entitled to, for similar services.

When surveyors are interested, the court may appoint for the occasion.

SEC. 4. That all chain carriers, employed by county surveyors or their deputies, in the performance of any official duties which may be required of any such county surveyors or their deputies, shall take an oath for the faithful discharge of their respective duties as such; and such county surveyors and their deputies, are hereby authorized to administer such oath.

Chain carriers to be sworn.

SEC. 5. That the surveyors of each and every county within this state, shall, when directed by the board doing county business, procure a certified copy from the register of the land office of the district in which their respective counties are situate, the field notes of the townships, ranges, sections, fractional sections and quarter sections as originally surveyed, and deposit the same in the recorder's office of the proper county, where the same shall be kept for the use and benefit of the citizens of said county, and at all times subject to their inspection.

Surveyors shall procure field notes from land offices.

Where deposited.

SEC. 6. When any person, being the owner or proprietor of any land within this state, wishes to perpetuate a corner or corners thereto, such owner or proprietor shall call upon the county-surveyor of the county in which such lands are situate, who shall upon proof of notice ten days previously given, to those that may hold lands adjoining the same, provided that the person holding such lands shall be an inhabitant of such county, where the same may be situate, and if not a citizen of such county, then the person or persons wishing to perpetuate such corner or corners, shall give three week's notice in some public newspaper nearest where the lands lie, and then the said county surveyor shall proceed to relocate such corner or corners, by depositing in the place where the original stake or corner stood, a stone or some other durable material, which if of timber shall be deposited two feet in the earth, and present one foot above the surface, having engraved on such corner stone

Corners of land, how perpetuated.

Notice to non-resident owner.

or stake, the letters and figures answering to such corner or corners; and such surveyor shall enter in his field notes, the species of corner, with one or more living trees, (if any there are,) the kind of trees, with their diameter, with the course and distance of the said bearing trees, which shall be entered in a book to be kept by him for that purpose; for which services as aforesaid, the surveyor shall be allowed in addition to his usual fees, agreeably to the lines necessary to be surveyed to establish one or more corners, the sum of one dollar for each corner thus located, which location thus made, shall be by the said surveyor recorded in the book aforesaid.

Surveyor's fees.

Expenses.

Transcript of record shall be evidence.

SEC. 7. And all necessary expenses incurred in procuring and recording said field notes, shall be paid out of the county treasury of the proper county, on the order of the board doing county business. That the recorder shall on application of any person, give a certified transcript from said record of the field notes of the survey of any section, quarter of section, or other tract of land, for which certificate the recorder shall be entitled to receive fifty cents, to be paid by the individual applying for the same; and such certificate shall be received as *prima facie* evidence, where the original would have been received.

NOTE. The provisions in the first section of this act which relate to the appointment of county surveyor, are so changed as to place the appointing power in the circuit court. See act which follows.

An Act to amend the act entitled, "an act for the appointment of County Surveyors and their Deputies," approved February 4, 1831.

[APPROVED FEBRUARY 2, 1833.]

County surveyor's duty.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the several county surveyors in this state, when they shall have procured the copy of the field notes of the lands in their respective counties, agreeably to the provisions of the act to which this is an amendment, to cause the same to be recorded in the recorder's office of the proper county, and retain the said copy in his own office.

Duty of recorders.

SEC. 2. That where the field notes aforesaid have heretofore been procured and deposited in the recorder's office in any county in this state, it shall be the duty of the recorder of every such county to record the said copy and return the same to the county surveyor.

Further duty of surveyors.

SEC. 3. It shall be the duty of each county surveyor in this state to retain the said copy of field notes of the lands in his respective county, and deliver the same, together with the record book of the field notes of the corners by him relocated and perpetuated under the provisions of the sixth section of the act to which this is an amendment, to his successor in office.

Term of office three years, and vacancies filled by circuit court.

SEC. 4. Whenever any person heretofore appointed, or who may hereafter be appointed to the office of county surveyor, and shall have held the same three years, such office shall

become vacant and expire, and whenever such office shall thus expire, become vacant by death, resignation, or otherwise, the circuit court of the county where such vacancy may happen, shall appoint a person well qualified to discharge the duties of such office, who shall hold such appointment for three years, and until his successor is appointed and qualified.

SEC. 5. The two associate judges in vacation, if it should become necessary, may fill any vacancy that may occur in the office of county surveyor of the proper county, by death, resignation, or removal from the county, until the next regular session of the circuit court, and the court at any regular session may make an appointment to such office, for three years in anticipation of a vacancy that will happen by the expiration of the term before the next session of the court, but such appointment shall not take effect, until the predecessor shall have served the full term of three years.

Associate judges may fill vacancies in vacation, until next term, &c.

Court may make appointments in anticipation of vacancies.

SEC. 6. That if it shall be made to appear to the circuit court, that any county surveyor is incapable of performing all and singular the duties enjoined on him by law, or that he has neglected or refused to do and perform any official act he may be required to perform, unless prevented by unavoidable accident, the court shall dismiss such county surveyor from office, and forthwith appoint a successor to fill such vacancy.

Removal from office, for what cause.

SEC. 7. That if any person wishing to have a county surveyor removed from office, shall file in the office of the clerk of the circuit court of the proper county, at least thirty days before the sitting of such court, a petition setting forth the cause of complaint, whether it relates to incapacity, misconduct in office, or neglect of duty; and the clerk shall forthwith make out a certified copy of such petition, and also a summons directed to the sheriff, requiring him, within ten days thereafter, to notify such surveyor, either by reading such summons to him or leaving a certified copy thereof at his last place of residence, to appear at the next circuit court, on the first day of the term, to answer said complaint; and the sheriff shall at the same time leave with such surveyor at his residence, or deliver to him in person, a copy of said petition, and it shall be competent for said court, on the first day of the term, or as soon thereafter as the parties may be ready, to hear such complaint, the answer thereto, the proof in support thereof, and decree as may seem just and proper.

Petition for removal.

Clerks' and sheriffs' duty.

SEC. 8. That the court before whom such complaint may be tried, shall render judgment for costs against such petitioner, if the respondent shall be acquitted, and against the respondent if he shall be found guilty.

Judgment for costs.

SEC. 9. That it shall and may be lawful for any surveyor, who shall be appointed under the provisions of this act, to ask, demand, and receive from his predecessor any book or books relating to said office, in which it is by law made the duty of such surveyor to keep, and all records, field notes, and other papers appertaining to said office; and whenever such office shall become vacant, either by death, resignation, or otherwise,

Books, &c. to be delivered to the person appointed.

it shall be the duty of any person or persons having the possession of such books and records, field notes, or other papers pertaining to such office, to hand the same over on demand, to such successor in office.

CHAPTER CIV.

AN ACT relating to the office of school commissioner in certain counties.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That in those counties in this state in which previous to the passage of the act entitled "an act incorporating congressional townships and providing for public schools therein," approved February 6th, 1837, the county treasurer of the same held the office and discharged the duties of school commissioner, and whose term of service has not as such commissioner expired, and who may have continued to discharge the duties of both said offices, be, and their acts are hereby legalized, and the said county treasurer may hold and continue to exercise the duties of said office of school commissioner, and may be re-elected to such office of school commissioner, the provisions of the above recited act to the contrary notwithstanding.

This act to be in force from and after its passage.

AN ACT to enable school commissioners of the several counties of this state to correct the returns of the collectors.

[APPROVED FEBRUARY 1, 1836.]

School com'r re-
quired to correct
the returns of
collector.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the school commissioners of the several counties of this state, are hereby authorized, empowered, and required to correct the returns made by the collectors of their several counties of delinquent lands in such counties, on applications being made to them by the owners of such tract of land, and on proof having been made to them, that the taxes charged on any tract of land on the duplicate, had been duly paid to the collector of the proper county, before the same was returned to the commissioner as delinquent; and such tract of land shall be exempt from the payment of the per centum fixed by law for non-payment of taxes.

Proof.

SEC. 2. The proof to be taken shall be by disinterested affidavit of the payment of the taxes or of the handwriting of the collector, to a receipt or receipts for the payment of the taxes. And in all cases, the collector if living in the county, shall be subpoenaed to attend at the time of taking such affidavit, and

shall have the right to cross examine the affiant before the commissioner, which cross examination shall be taken down in writing, and, together with the affidavit, copied in a book, by the commissioner, to be kept for that purpose, such cross examination and affidavit shall be signed by the affiant, and put on file in the commissioner's office. And any person making any false affidavit, or any material false answers on examination under this act, shall be liable to indictment and conviction for perjury.

SEC. 3. The commissioner may issue subpoenas and administer oaths under this act, and subpoenas shall be served as other subpoenas are served. And a collector or his deputy, shall be a competent witness in behalf of any person claiming to have paid his taxes.

SEC. 4. This act shall take effect and be in force from and after its passage.

CHAPTER CV.

An Act to licence and regulate Taverns and Groceries.

[APPROVED FEBRUARY 3, 1832.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the several courts of county commissioners, are hereby authorized to license as retailers of spiritous or strong liquors, every person who may apply therefor; but the said court shall not grant any license, or permit, to any person to vend spiritous or strong liquors, in any county within this state, unless such person applying therefor, (if a tavernkeeper) shall produce the certificates of twenty-four respectable freeholders, who are inhabitants of such town or township, certifying that the person or persons so applying, are of a good moral character; that it would be for the benefit and convenience of travellers, and conducive to the public good, if such tavern should be opened, and that they believe it is the bona fide intention of such applicant or applicants, to keep a tavern for the accommodation of travellers: *Provided, however*, That if the town or township where the tavern so proposed to be kept, does not contain twenty-four freeholders, who are inhabitants, that the number may be completed by freeholders in the immediate vicinity.

SEC. 2. That before any person shall be entitled to a license to keep a tavern under the provisions of this act, he, she or they, so applying, shall prove to the satisfaction of the county commissioners of the proper county, that such applicant is the bona fide owner or tenant for one or more years, of a good house, with at least three apartments, and a stable convenient to said house, with at least four good stalls; and further, that such applicant is the owner of at least two beds and bedding, over

Bond.

and above what is used by his or her family, and all other furniture proper and necessary, for a tavern in such town or village. And such applicant or applicants, shall give bond with sufficient security, to be approved of by such court, in the sum of five hundred dollars, payable to the county treasurer, for the time being, and his successors in office, that he, she, or they will not permit any gambling, rioting or disorderly conduct in his, her or their house, but will conform to the laws of this state, restraining gambling and disorderly conduct, about taverns or public houses; and that he, she, or they will not suffer any unlawful assemblies, or sell or retail any spiritous or strong liquors on the Sabbath day, or first day of the week, commonly called Sunday, except to travellers; and shall at all times during the continuance of said license, keep in the house wherein the tavern is kept, at least one spare room, and two beds and bedding, besides that which is used by the family, together with other necessary furniture, and good stabling for at least four horses; which bond shall be filed in the clerk's office, and if the condition thereof be forfeited, the circuit court, at any time thereafter, on complaint made to them, are hereby authorized to suppress such license: and it is hereby made the duty of the county treasurer to put such bond in suit; and no license or permit, as aforesaid, shall be transferable in any manner whatever.

Suit on bond, & suppression of license.

License not transferable.

Tax on license, its duration, and how granted in vacation.

Penalty for re-tailing after expiration of license and other violations.

Groceries, how licensed.

Certificate.

SEC. 3. No person shall obtain license as a retailer of spiritous or strong liquors until he, she, or they shall pay to the county treasurer, the amount required by law for such license; nor shall any license continue for a longer time than one year; and in vacation between the meetings of such courts, the clerk shall give a permit to any person applying to retail spiritous or strong liquors, until their next meeting, if such person shall and will comply with the preceding provision of this act; but if any person shall continue to retail spiritous or strong liquors, after his or her license has expired, such person shall be subject to the same fine as though he or she had never had a license; and if any person obtaining license under the provisions of this act, shall, during the continuance of such license, fail to comply with any of the requisitions of this act, he shall upon presentment or indictment, be fined in any sum not exceeding fifty dollars, and have his tavern abated.

SEC. 4. That the several courts doing county business in this state, are hereby authorized to license, as retailers of spiritous or strong liquors, and foreign and domestic groceries, any person or persons who may apply therefor, for a term not less than one year, without requiring said person or persons to be obligated to keep on hand the bedding and stabling, with other accommodations necessary for the comfort and convenience of travellers.

SEC. 5. Before any person or persons (as grocery keepers) shall be entitled to obtain license, under the provisions of this act, he, she or they shall produce the certificate of at least twenty-four respectable freeholders of the town or township where the applicant resides, that the person or persons apply-

ing for a license, is or are of good moral character; and it shall be his, her or their duty to enter into bond, in the same manner, and under the same restrictions, requisitions and conditions, as are required in this act for tavernkeepers, except as to the keeping on hand the bedding and stabling as aforesaid, and shall be governed in every respect as such licensed tavern keepers: *Provided*, that no license shall be granted to any person residing within any town or township, where a majority of the freeholders in such town or township, shall remonstrate against the granting of the same. Bond. Citizens may remonstrate.

SEC. 6. The person or persons obtaining such grocery license, shall pay to the county treasurer the full amount that may be fixed by the court doing county business, before said license shall authorize him, her or them, to vend or retail spiritous or strong liquors, foreign and domestic groceries; and the amount to be fixed by the court, shall be at such rate, as the commissioners of the county shall think reasonable and right, not less than ten, nor more than twenty-five dollars: *Provided*, it shall be lawful for merchants, licensed to vend goods, to sell foreign liquors by the small, for the use of the sick. Fees.

SEC. 7. If any tavern keeper or grocery keeper, shall retail on credit, spiritous or strong liquors, to a greater amount than one dollar, to one individual, such tavern keeper or grocery keeper, shall not have the benefit of the laws of this state for the collection of the same. Shall not sell liquors on credit.

SEC. 8. No person shall barter or sell to any minors, apprentices or servants, under the age of eighteen years, any strong or spiritous liquors, without the consent of his or her parent, master, or mistress; and no retailer of spiritous or strong liquors, shall knowingly sell or dispose of any intoxicating liquors, to any person in a state of intoxication. And any person or persons so licensed, to keep either a store, tavern, or grocery, who shall either sell or give spiritous liquors to an individual who is at the time in a state of intoxication; he, she, or they so offending, shall on conviction thereof, be fined in any sum not less than two, nor more than ten dollars, for each offence, to be recovered on presentment or indictment, before any court having competent jurisdiction thereof. Nor to minors, &c. Nor to intoxicated persons.

SEC. 9. Each tavern keeper shall be bound to keep in, one of his most public rooms, and in plain view of his guests, a complete list of his own rates and prices, for food, lodging, liquor and stabling for horses, under such penalties as are prescribed in the 57th section of the act regulating crime and punishment. Tavern rates to be posted.

SEC. 10. It shall be the duty of the circuit courts, at their several terms, in the proper counties within this state, to give this act in charge to the grand jury. Circuit c. shall give this act in charge to g. jury Who may demand possession

CHAPTER CVI.

AN ACT concerning tenants holding over.

[APPROVED FEBRUARY 17, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That when any lands, tenements, or hereditaments, are held or passed under any landlord or landlords, by any tenant or tenants, either for a period indefinite and uncertain, or at will paying rents, or by making valuable and lasting improvements thereon, at rent value, for such holding or possession, or from year to year, expressly or constructively, as long as the parties respectively please, each landlord or landlords, his, her or their heirs, devisees, or assigns, if desirous to acquire possession of said premises, shall give notice to such tenant or tenants his, her, or their representatives, heirs, sub-lessees or assigns, to quit the possession of said premises; which notice, if such holding or possession enures as a tenancy from year to year, shall be given at least three months before the expiration of the current year, ending on the day when such possession had commenced; and if such tenant or tenants, his, her or their representatives, heirs, sub-lessees, or assigns, shall refuse to comply with such notice within three months after giving the same, such landlord or landlords, his, her, or their heirs, devisees, or assigns may complain thereof before any two justices of the peace of the county where such premises are situate, shall forthwith issue their warrant directed to the sheriff of such county, commanding him to summons as well such tenant or tenants, his, her, or their representatives, sub-lessees, heirs or assigns, (as the case may be) to appear before said justices at a certain place, within four days thereafter, to answer said complaint, as also, twelve freeholders as jurors, to meet at the same time and place, for the trial of the questions arising under such complaint. And either party shall have the same privileges in challenging any of said jurors, and for the same causes, as in circuit courts; and said justices may order any defect in, or want of such panel of jurors, to be supplied from any bystanders or others, according to law. And if on hearing the cause, proofs and allegations, in the absence or on the appearance of the defendant, it shall appear, that from all the circumstances, the plaintiff is entitled to the legal possession of said premises, and that notice had been given as aforesaid, the jury shall find for the complainant accordingly, and shall also assess for the complainant, against such defendant, such damages for the unjust detention of said premises, as they may deem reasonable; and said justices shall thereupon render judgment that complainant have restitution of the premises of the defendant, and for said damages and costs of suit; and shall forthwith if required, issue a writ of execution, directed to said sheriff, commanding him to make restitution of such premises to the complainant, either by ejecting and removing such defendant,

Three months notice to be given to tenants.

Complaint to be made before two justices of the peace.

Venire.

Challenge to jurors.

Judgment and damages.

and his goods and chattels therefrom, or otherwise; and also to levy such damages and costs of the goods and chattels of said defendant, in like manner as other executions of *fiери facias* issued by a justice of the peace such execution shall be served, returned and in all respects governed as such executions of *fiери facias* last aforesaid, except that the officer executing the same shall in pursuance thereof, proceed to make immediate restitution of such premises as aforesaid.

SEC. 2. An appeal shall be granted on such judgment, to Appeal. either party under such regulations and restrictions as are required in appeals from the judgments of a justice of the peace; and in estimating the amount of the damages arising from the unjust detention of said premises, the jury or circuit court, as the case may be, shall take into consideration such detention down to the time of such finding. The appeal bond to be filed with the justices by the appellant, and sent up to the circuit court, with the other papers in the cause, shall be conditioned that he will duly prosecute his said appeal, and pay the amount of the judgment of the circuit court for damages and costs, should the same be rendered against him, such cause in the circuit court may be tried by a jury or by the court, at the option of both parties.

SEC. 3. If the defendant shall allege that the title to the lands, tenements, or hereditaments in question is disputed and claimed by some other person or persons other than the complainant, whom he shall name, by virtue of a right or title accrued or happening since the commencement of the tenancy, by descent, deed, or demise; and if thereupon the person so claiming shall forthwith, or upon summons immediately to be issued by said justices, returnable before them within four days next following, appear and on oath or affirmation, to be by one of said justices administered, declare that he verily believes that he is entitled to the premises in dispute, and shall with one or more securities enter into a bond to the complainant in the penal sum of two hundred dollars to be approved of by said justices, conditioned that he will prosecute his claim aforesaid at the next circuit court of said county; then said justices shall forbear to render judgment as aforesaid: *Provided*, that if default be made in the condition of said bond, such justices shall proceed (after first notifying such claimant if he be in said county, to shew cause, if any, to the contrary) to render judgment and issue execution as first aforesaid.

SEC. 4. Where any lands, tenements, or hereditaments have been or shall be demised or leased, for any term certain or definite, the right of possession to the same, of the tenant or tenants, his or their representatives, heirs, assigns, or undertenants, shall determine on the expiration of such lease or demise, and in such case, it shall not be necessary for the landlord, his or her heirs or assigns, to give notice to quit the premises as aforesaid, to avail himself, herself, or themselves of the benefits of this act; neither shall such notice to quit be necessary, in case of a tenant at will who commits waste, or of a tenant at sufferance, nor in any case, unless there exists be-

Proceedings on plea of title in another person.

Bond on plea of title.

Proviso.

Testimony of non resident witnesses how to be taken.

tween the parties, either expressly or constructively, the relation of landlord and tenant; but in all such cases, the landlord or landlords, his, her, or their heirs devisees or assigns, shall be entitled to the provisions of this act without proof of the giving such notice: *Provided*, that nothing in this act shall be so construed as to defeat or impair the right of the tenant, to implements and the growing crop to which he would be entitled if this act had not passed.

CHAPTER CVII.

AN ACT for the equal distribution of the three per cent. fund.

[APPROVED, FEBRUARY 6, 1837.]

How distributed SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the sum of two thousand dollars is hereby appropriated out of the three per cent. fund to each of the organized and unorganized counties in this state as may accrue, for the purposes of improvement of such state roads or parts thereof, or to the construction or repairing of bridges in said county as the said board may order and direct, unless otherwise provided by law.

Ag't appointed. SEC. 2. The board doing county business for each county shall at some regular session appoint a commissioner in such county in which no commissioner is appointed by the legislature. And where an unorganized county or counties are attached to such county shall appoint a commissioner in each of such unorganized counties, who shall enter into bond and security to the satisfaction of said board payable to the county treasurer of said county in the penal sum of four thousand dollars, conditioned for the faithful performance of his duties as such commissioner of the three per cent. fund, and take an oath of office.

Vacancy. SEC. 3. Should any such commissioners refuse to qualify, or should the said office become vacant by any means whatever, such board shall appoint a suitable person to fill said vacancy, and the person thus appointed shall be governed by the provisions of this act.

Clerks. SEC. 4. On entering into such bond, and taking the oath as aforesaid, the clerk of said board shall under their directions deliver to said commissioner a certificate thereof, and of said appointment, which shall authorize the treasurer of state to pay over from time to time to said commissioner or his order, his proportion of his fund on hand.

Allowance. SEC. 5. Each commissioner shall be allowed by the board doing county business, one dollar for each day he shall be actually employed, and his necessary expenses.

This act to take effect and be in force from and after its passage.

AN ACT to regulate the disbursements of the three per cent. fund in the unorganized counties.

[APPROVED FEBRUARY 4, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That so much of the three per cent. fund as has been or may hereafter be appropriated to any of the unorganized counties in this state shall be drawn for and expended within the proper limits, under the direction of the board doing county business of the proper county, to which such unorganized county may for the time being be attached for judicial purposes, in the same manner and to the same extent as such boards may by the existing laws draw for and expend the fund appropriated to their proper and respective counties. *Fund how expended.*

SEC. 2. That it shall be lawful for said boards to reimburse out of the fund so appropriated to any unorganized county, any and all expenses which may have been or may hereafter be incurred by any organized county in the survey and location of state roads through or within the territory of such unorganized county. *Expenses, how paid.*

SEC. 3. That the same sum of money which was by an act of the last session of the general assembly appropriated out of the three per cent. fund to each of the organized counties in this state be, and the like sum is hereby appropriated to each of the unorganized counties, to be paid out of the first moneys of the three per cent. fund not yet appropriated. *Amount appropriated.*

This act to be in force from and after its passage.

AN ACT to provide for the settlement of accounts of commissioners of the three per cent. fund in the several counties.

[APPROVED FEBRUARY 4, 1837.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the commissioners of the three per cent. fund in the several counties of this state, be, and they are hereby required to render to the several boards doing county business in their respective counties, at any term previous to the first day of July next, a regular and detailed statement of the receipts and expenditures as well as the present condition of the three per cent. fund of their respective counties that may be chargeable to any such commissioners. And it shall be the duty of the several boards doing county business in their respective counties, at any regular term after the first day of July next to make such order or orders with regard to the collection or expenditure of the three per cent. fund belonging to their respective counties as they may deem expedient. *Com'r shall render account.*

SEC. 2. Should any such commissioner fail or neglect to

make settlement as aforesaid, with the proper board doing county business, or to pay over, or to account as such board may direct, for every and all sum or sums of money which may have been at any time received by any such commissioner, then and in that case, it shall be the duty of such board to cause suit to be brought forth with against any such delinquent commissioner and his securities: And the certificate of the treasurer of state shall be *prima facie* evidence of the amount of money received by such commissioner, in any suit they [that] may be hereafter instituted by virtue of this act.

Report.

Sec. 3. It is hereby made the duty of each and every commissioner of the three per cent. fund, to make annual report hereafter, at the first term in each year, under oath, of the condition of such fund, to the board doing county business of the proper county: And any commissioner failing to do so, shall upon indictment, be fined not less than five dollars for every thirty days so failing or neglecting to report as aforesaid. And it shall be the duty of circuit courts to give this act specially in charge to grand juries.

CHAPTER CVIII.

AN ACT providing for the incorporation of towns.

[APPROVED FEBRUARY 17, 1838.]

Town wishing to become incorporated may petition board doing co. business.

Board shall order an election of trustees.

Sec. 1. *Be it enacted by the General Assembly of the state of Indiana*, That whenever the inhabitants of any town wish to become incorporated for the better regulation of their internal police, it shall be lawful for the qualified voters, who shall have resided six months therein, and pursued any trade or occupation during such time, or who shall be the owner of any freehold property in said town, to petition the board doing county business, in the county in which such town is situated, to that effect; and when two thirds of all the qualified voters, who shall reside within the limits of such proposed incorporation shall have signed said petition, and the same is presented to said board, and proved to have been signed by the persons whose signatures are on the same, by the oath of any reputable person, the said board shall order an election to be held at the usual place of holding elections in said town, on some day within one month from that time, for the purpose of electing trustees of such incorporation, of which said board shall cause ten days notice to be given, by written advertisements, to be put up in three of the most public places in said town.

Election of trustees, how conducted.

Sec. 2. At the meeting of the qualified voters for the election of trustees, they shall first proceed to elect a president and clerk of said meeting, who after being qualified, shall without delay, lay off said incorporation into five districts, and forthwith present the same to said voters, who shall proceed to elect

by a vote of the whole town, one trustee in each of said districts, who shall serve one year and until their successors shall be chosen and qualified.

Sec. 3. An election for trustees as aforesaid shall be held annually, after the first election, on the first Monday of May; and at every such election the preceding board of trustees shall direct the manner in which the same shall be conducted.

Sec. 4. Vacancies made by death, resignation or otherwise shall be supplied by election, in manner hereinbefore directed, by the qualified electors, on a day to be appointed by the remaining trustees; and the returns shall be made in such manner as shall be directed by the trustees.

Sec. 5. It shall be the duty of the trustees first elected under this act, before they proceed to make any by-laws or regulations, by virtue of their election to office, to deposit in the clerk's office of the respective county, the certificate of the president and clerk, of the election of the first board of trustees, together with their names; and no act or ordinance of any such first board of trustees, shall be valid or of any force, unless the provisions of this act shall have been strictly complied with.

Sec. 6. It shall be the duty of the clerks of the several counties to make a record of such certificate as may be lodged in their offices by the board of trustees, agreeably to the provisions of this act, within three months after the same shall have been so deposited therein, for which services he shall be allowed the same fee, to be paid by the trustees, as he is allowed for similar services.

Sec. 7. The board of trustees of any town, elected agreeably to the provisions of this act, shall choose a president out of their own body; and the president and trustees aforesaid, duly elected agreeably to the provisions of this act, and their successors in office, shall thenceforth be considered in law and equity a body corporate and politic, to have continuance forever by the name and style of the "president and trustees of the town of—;" and by such corporate name and style, shall be forever able and capable in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters and demands, of whatsoever kind or nature they may be, in as full and effectual a manner as any person or persons, bodies corporate and politic, may or can do.

Sec. 8. Whenever any town shall be incorporated agreeably to this act, the president and board of trustees, or a majority of them, shall have full power, from time to time, and at all times, to make, ordain, establish and execute, such by-laws and ordinances, in writing, not inconsistent with the laws and constitution of this state, as they shall deem necessary for the good government of such corporation; and to prevent and remove nuisances, to restrain and prohibit gambling or other disorderly conduct, to provide for licensing, regulating or restraining theatrical and other public shows and amusements within the corporation, to regulate and establish markets, to sink and keep in repair public wells, and shall have the sole and exclusive

power and authority to keep in repair all necessary streets, alleys and drains, and to pass regulations necessary for the same, agreeably to the plan of said town.

Sec. 9. The president and board of trustees, or a majority of them, shall have full power to assess and collect annually, taxes on all real property, not exceeding fifty cents on every hundred dollars of assessment valuation thereof; also a poll tax on every actual citizen qualified to vote, not exceeding fifty cents on every hundred dollars of assessment valuation thereof; also a poll tax on every actual citizen qualified to vote, not exceeding fifty cents each; also a reasonable tax on all other property which they may think proper subjects of taxation; also full power and authority to appoint a lister, a treasurer, a clerk, and such other officers as they find necessary, and shall allow them what they shall deem reasonable, for their services; who, when appointed, shall be governed by such rules and regulations, as shall be prescribed by said president and board of trustees; and the person or persons appointed to collect any tax imposed, by virtue of any of the powers granted by this act, shall have authority to collect the same, by distress and sale of the goods and chattels of the person chargeable with the same tax, on giving ten days' previous notice of the time and place of such sale; and if no goods and chattels, of the person chargeable with said tax, can be found, it shall be lawful to seize and sell any lot or lots, or part or parts thereof, or so much as will pay and satisfy such taxes due and in arrear, and all costs accruing on such sale, paying to the owner or owners the overplus if any; and such collector, in making such collections and sales, shall have the same powers and shall be governed by the same rules and regulations, as collectors of state and county taxes; and shall in like manner, make conveyances and certificates to the purchasers at such sale: it shall also be his duty to make a return of all sales of lots by him made, to the clerk of the circuit court, in the same manner as collectors of state and county revenue are required to do: but in no case shall real estate, the property of minors or *femes covert*, be sold for a corporation tax by virtue of this act. And any real estate sold by virtue of this act, shall be redeemable at any time within two years, by the payment of the full amount for which the same may have been sold, with fifty per centum thereon, and also the amount of all taxes or charges subsequently accrued thereon, with legal interest on the same; and if the purchaser cannot be found conveniently, the same shall be redeemed by payment made into the corporation treasury, for the benefit of the purchaser.

Sec. 10. A majority of the members of any board of trustees, shall be a quorum to transact business, but a less number may make adjournments, and shall have the power to compel the attendance of absent members, by imposing such fine on delinquents, as will insure their attendance; and the said board of trustees shall be the judges of the election of their own members and officers, and two thirds of the members concurring, may expel any officer or member, for mal-conduct or highly disorderly behaviour.

Assessment and collection of taxes.

Poll tax.

Lister, treasurer and clerk.

Collection of taxes.

Real estate of minors & *femes covert* shall not be sold. Redemption.

Sec. 11. When, in the opinion of the board of trustees of any town, it would be a benefit to such town to increase the number of trustees thereof, they may order nine to be elected at their next annual election, and at every succeeding annual election thereafter.

Sec. 12. The said president and board of trustees shall have full power and authority to enforce their by-laws and ordinances in all cases whatever; but no fine, penalty or forfeiture, shall be inflicted on any one person, for a breach of any one of their by-laws or ordinances, for more than three dollars for every time he or she shall so offend; which penalties and forfeitures may be recovered before any justice of the peace in the county, by action of debt, according to law.

Sec. 13. No by-law or ordinance shall be in force, until it shall have been published in at least three of the most public places in said town, for ten days, and also in some public newspaper, if any there be published in such town.

Sec. 14. All moneys arising from fines, taxes, penalties and forfeitures, shall be appropriated by said president and board of trustees, towards the erecting, improving, and regulating those objects, which by this act are placed under their control and jurisdiction, as likewise for defraying all such expenses as may accrue, or necessarily arise out of the exercise of powers granted to them by this act: That the bounds of the corporation of each town, shall be the building lots as recorded in the recorder's office of the respective counties; and when any new building lots shall be laid off adjoining any town, and the plat thereof recorded, the same shall form a part of the said corporation, entitled to the same privileges, and subject to the same rules and regulations as the organized corporation; and for the purpose of removing nuisances, the limits of the corporation shall extend one half mile in each direction, from the recorded plat of said town: *Provided*, That when two-thirds of the householders residing on any tier of out-lots adjoining any incorporated town, are desirous of being embraced within the bounds of such incorporation, and they shall petition the president and trustees of such incorporation to that effect, it shall be lawful for the president and trustees of said incorporation, upon the petition being proved by the oath of a respectable citizen, to have been signed by the persons whose names are affixed to the same, to order and cause said petition to be spread on the record book of said incorporation; from which time the said tier of out-lots shall be made a part of said corporation; and the inhabitants residing thereon, and the owners thereof, shall be subject to the rules and regulations of said incorporation, and entitled to all the privileges of the same.

Sec. 15. It shall be lawful for the trustees, or other constituted authorities of any incorporated town, whether incorporated under this act or any other act of the general assembly of this state, to extend the jurisdiction thereof, over any commons or public ground belonging to said town, and the trustees of any such incorporated town, situate on a navigable stream in this state, shall have power to regulate the banks, shores and

Penalty for violating ordinance limited.

Ordinances, &c. when to be in force.

Money, how appropriated.

Bounds of corporation.

Trustees on petition may extend limit of the incorporation.

Jurisdiction over commons, public grounds, streams, &c.

wharves in front of said town, and the same shall be deemed a part of the corporation, and within the jurisdiction of the trustees thereof: *Provided*, The owner or owners thereof shall consent thereto: *Provided, however*, That this act shall not give power to any corporation, to alter, vacate, or in any manner affect any ferries, heretofore established by law, or which hereafter may be established.

Proviso.

Incorporated towns may erect town jails.

SEC. 16. The corporation of any town, whether incorporated under this or any other act, shall have power to erect a prison within their respective limits; and it shall be lawful to imprison therein, persons convicted of offences against the laws of such corporation, or of offences against the penal laws of this state; and also persons charged with offences punishable by indictment or presentment, temporarily, until they can be conveniently removed to the county jail; and the laws relating to county jails, so far as the same may be applicable, shall be the laws of the town prison aforesaid: and in all cases where the county jails are convenient, it may be lawful for the same to be used for town purposes, until a town prison shall be erected.

Fine may be commuted by labor, &c.

SEC. 17. That any person convicted of petty offences as aforesaid, and fined therefor, within such corporate town, if they have no goods and chattels out of which the same can be made, may commute the same by labor on the public streets of such town, at the rate of fifty cents per day, until the fine assessed be discharged; and if any such prisoner after undertaking to commute as aforesaid, shall escape, without performing the same, he may be fined for such offence, not exceeding the amount of the original fine for which he may have undertaken as aforesaid.

Town authorities may establish fire companies, &c.

SEC. 18. That it shall be lawful for the constituted authorities of any town, incorporated under this or any other act, to establish fire companies in any such town, and give such companies such power and authority, and to govern and regulate them, by such by-laws and regulations as may be necessary; and they shall also have authority to appropriate any of the funds, to purchase and procure fire engines, hooks and ladders, [buckets] and all other things necessary for the extinguishment of fires in any such town, and to pass and enforce all such by-laws and regulations, as may be necessary to prevent the occurrence of fires in such town.

Tippling houses in town restrained, &c.

SEC. 19. It shall not be lawful for any person or persons, within the bounds of such corporation, to retail by less quantities than one quart, any spiritous liquors, foreign or domestic, or to keep what is commonly called a tippling house, unless such person or persons, shall, in addition to a license obtained from the board doing county business, obtain a license from the constituted authorities of said town, who are hereby authorized to grant the same, for any term not exceeding twelve months at one time, on the applicant paying into the treasury of the corporation, a sum at the discretion of the corporation authorities, not less than twenty-five dollars. And any person or persons retailing, contrary to this provision, shall be punished in like manner as for retailing without license or permit from the

county. And the funds arising from such licenses, shall be a permanent fund for the support of common schools in such town, under the direction of the constituted authorities of the same.

SEC. 20. Nothing in this act shall be so construed as to prevent the qualified voters of any town, heretofore incorporated, from adopting this act of incorporation; and in case they shall do so, their former charter, so far as it may be contrary to this act, shall be void; such adoption to be made at some regular annual election, notice of the intention to take a vote on such subject being given [three weeks] previous to taking the same, in the same manner that by-laws are required to be published, and two-thirds of the voters in such town voting for such adoption. But the powers and privileges granted by sections fifteen, sixteen, seventeen, eighteen and nineteen of this act, shall be and the same are hereby extended and conferred to all incorporated towns, as an addition to their present charters; and without any special adoption thereof by them.

Powers extended to towns now incorporated.

SEC. 21. Nothing in this act shall be so construed as to prevent any general assembly, from hereafter dissolving the corporations created under and by virtue of this act, or repealing this act or any part thereof, or from making any amendments thereto, that may be deemed expedient.

Gen. assembly may dissolve corporation under this act.

SEC. 22. Whenever two-thirds of the inhabitants of any town incorporated by virtue of this act, are desirous of dissolving the corporation, it shall be lawful for them to present a memorial or petition, to the board doing county business of the proper county, signed by two-thirds of the legal voters of said incorporation, including the president, and a majority of the board of trustees, setting forth the cause of such dissolution. And the said board, on proof that notice of such intended application to dissolve the incorporation, has been given in a public newspaper, if there is one printed in the county, if not, by notice in writing, set up in each district in said incorporation, for four successive weeks previous to the sitting of said board, which notice or notices shall be signed by the presiding officer of said board of trustees, the board doing county business, shall thereupon proceed to hear and determine upon the cause of such dissolution, and may, if such causes appear sufficient in the opinion of the board, dissolve the incorporation. *Provided, however*, That no such dissolution, shall in anywise affect any vested rights, contracts or agreements, agreed or made under and by such incorporation, by any individual or individuals. And such incorporation shall be liable for all debts contracted during the existence of the same; and it shall lay out and expend all moneys for, and towards accomplishing the objects for which they were collected, previous to such dissolution.

Board doing c'ty business on petition may dissolve corporation.

SEC. 23. That whenever the said board shall dissolve any incorporation under the provisions of this act, they shall cause an entry of the same to be made upon the books of their proceedings, together with the causes set forth for such dissolution.

Record of dissolution.

CHAPTER CIX.

AN ACT to authorize the Vacation of Towns.

[APPROVED FEBRUARY 7, 1838.]

Town not incor-
porated, how
vacated.Petition to coun-
ty board.

Notice.

County board
may vacate, if
not objected to,
and how objec-
tion shall be tri-
ed.Effect of vaca-
tion.

Proviso.

Part of incorpo-
rated town may
be vacated by
the trustees, and
how.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any person, or body corporate, interested in any town in this state, not incorporated, or in any town in this state which has not a corporation in active operation, may desire to vacate any lot, street, alley, common or any part thereof, or may desire to vacate any public square or part thereof, in any incorporated or unincorporated town, it shall be lawful for such person or corporation, to petition the board doing county business for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, and the names of the persons to be particularly affected thereby, which petition shall be filed with the clerk of said board, thirty days previous to the sitting thereof, and notice of the pendency of said petition shall be given for the same space of time, either in a public newspaper printed in said town, or by manuscript notices thereof, set up in three of the most public places in said town, containing a description of the property to be vacated.

SEC. 2. If no opposition be made to such petition or application, the board doing county business, may in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good; but if opposition be made thereto, such application shall be continued until the next term of said board, at which time, if the objector shall consent to such vacation, or if the petitioner shall produce to the board the petition of two-thirds of the property holders in said town, of lawful age, the said board may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner, in whole or in part; and the part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof, according to law, and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley, and all right and title thereto, shall vest in the person or persons owning the property on each side thereof, in equal proportion, according to the length or breadth of such lot or ground, as the same may border on such street or alley: *Provided,* That no such vacation of a street or alley, shall take place, unless the consent of the person or persons owning the property immediately adjoining to said street or alley, be obtained thereto in writing, which consent shall be acknowledged before some justice of the peace and be filed with said board.

SEC. 3. That in all cases where any person interested in any incorporated town in this state, the corporate functions of which shall be in active operation, may desire to vacate any street, alley or common, or any part thereof, it shall be lawful

for such person, to petition the trustees or other body, in like manner as persons interested in towns not incorporated, are authorized to petition boards doing county business, and the same proceedings shall be had thereon, before such trustees or other corporate bodies, as are authorized to be had before the boards doing county business, and such trustees or other corporate bodies may determine on such application, under the same restrictions and limitations, as are provided for in the foregoing provisions of this act.

SEC. 4. That whenever a public square or any part thereof shall be vacated, the property thereof shall vest in the board doing county business, for the use of the proper county; and whenever any common or any part thereof in any incorporated town, shall be vacated, the same shall vest in the trustees or other corporate body, for the use of such town; and the proper authorities may sell the same and make a title to the purchaser thereof, and appropriate the proceedings thereof for the benefit of said corporation or county, as the case may be.

SEC. 5. That in all cases where two or more persons have laid out, or shall hereafter lay out a town on land contiguous and adjoining each other, and such town does not improve, either of the individuals holding all the legal right, title, and interest in all the lots so laid off by such party and attached, may leave the same vacated, as in case of a lot, street or alley, on application of the party laying out such addition, or part of said town, or on the application of such person as may acquire or derive the legal title to the land and lots in such addition. *Provided,* That in no case shall persons purchasing lots in other additions of said town be capable of making any valid objections to such vacation, if such vacation does not obstruct any public road laid out and established by law.

CHAPTER CX.

An Act for recording Town Plats

[APPROVED JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person or persons, his, her or their legal representatives, who may hereafter lay off any town within this state, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county, wherein the same may lie or be laid off, a correct copy of the plat of said town, with the public ground, (if any there be,) streets, lanes, and alleys, with their respective widths properly marked, and the lots, regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

SEC. 2. Every donation or grant to the public, or any in-

Public square
vacated, shall
vest in county
board.Common vaca-
ted, shall vest in
the trustees.Persons laying
off additions to
towns may have
the same vaca-
ted.

Proviso.

Plat to be recor-
ded before sale.Donations noted
on record.

dividual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on the plat of the town, wherein such donation or grant may have been made, shall be considered to all intents and purposes, as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.

SEC. 3. Every person or persons, hereafter laying off any lots in addition to any town in this state, shall previous to the sale of such lots, have the same recorded under the same regulations, as are provided for recording the original plat of said town, which shall be considered as an addition thereto.

Acknowledg-
ment.

SEC. 4. Every person or persons, whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or other paper or papers for record, acknowledge the same before the recorder of the proper county, or some justice of the peace thereof, a certificate of which acknowledgement shall be (by the officer taking the same) endorsed on the back of such plat or other paper, and recorded therewith, and form a part of said record.

Forfeiture.

SEC. 5. Every person or persons, who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions of this act, shall forfeit and pay for the use of said town, for every month that he or they may delay a compliance with the provisions aforesaid, the sum of one hundred dollars, to be recovered by action of debt, qui tam, or otherwise, in the name of the treasurer of the county: *Provided*, that where any town plat heretofore recorded, does not fully and clearly set out and describe the size of the lots, streets, alleys and courses of the lines of said town, and where donations have been given or intended to have been given, either to the public or to individuals, or to any religious society or societies, and the same hath been neglected to have been inserted on said plat, the proprietors of such town, or either of them, is or are hereby empowered and required, to make out such other description as will more fully and clearly explain their true intentions; which shall be acknowledged, certified, and recorded as required in this act.

Subsequent de-
scription, &c.

All laws and parts of laws relative to the recording of town plats, are hereby repealed.

This act to take effect from and after its publication.

CHAPTER CXI.

AN ACT providing for a more uniform mode of doing township business in the several counties therein named.

[APPROVED FEBRUARY 17, 1838.]

Townships in-
corporated.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the several townships in the several counties

in this state that now are or hereafter may be legally organized are hereby declared bodies corporate or politic, and by the names of their incorporations may sue and be sued, plead and be impleaded, answer and be answered unto in any and all courts having competent jurisdiction.

SEC. 2. The qualified electors in each county are hereby authorized and required to meet in their respective townships at the usual places of holding elections on the first Monday in April, annually, and proceed to elect three township trustees, a township treasurer and clerk, two overseers of the poor, two fence viewers and as many constables as there are justices of the peace in each township, and after the first election under the provisions of this act, as many supervisors of roads and highways as there are road districts in the township.

Township of-
cers, how and
when to be elec-
ted.

SEC. 3. At the first election held agreeably to the provisions of this act, the inspectors that now are or hereafter may be appointed in the several townships, shall conduct the elections in the same manner as is now provided for conducting county or township elections, he shall cause certificates of election to be made out and signed by himself and the judges of such elections, and attested by the clerk, and shall deliver the same to some constable of the proper township, who shall, within five days thereafter, deliver the same to the persons elected as aforesaid, and the person elected clerk as aforesaid, shall within five days after notice as aforesaid, appear before some person duly authorized to administer oaths, and take an oath or affirmation faithfully and impartially to discharge the duties of township clerk according to law; and the several other officers elected as aforesaid shall within twenty days after the election, appear before the clerk of the township who is hereby authorized to administer oaths, or before some other person duly authorized to administer the same and take each an oath or affirmation faithfully and impartially to discharge the several duties assigned according to the provisions of this act.

Elections, how
conducted.

Constables to de-
liver cert. of e-
lection to person
elected.

Officers shall
take oath.

SEC. 4. The officers elected agreeably to the provisions of this act shall severally hold their offices one year and until their successors are chosen and qualified: *Provided however*, that the township treasurer and constables shall before entering on their duties severally give bond with security, to be approved of by the trustees, in the sum of five hundred dollars, conditioned for the faithful discharge of the duties enjoined on them by this act, which bond shall be made payable to the township treasurer and his successor in office.

Term of office.

Constable and
treas. shall give
bond.

SEC. 5. The township trustees shall meet at the usual places of holding elections, or as near thereto as may be convenient, on the first Mondays in March, June, September and November, annually, to transact the business of the townships, they shall at their first meeting divide their townships into a suitable number of road districts, by range, township, county, section, or half section lines, and shall at their first meeting aforesaid, appoint a suitable person in each district as supervisor of highways, who shall continue in office until their successors

Trustees shall
meet and lay off
township into
road districts.

are elected and qualified, and shall be governed as supervisors are in other cases: *Provided*, the trustees may at any subsequent meeting alter the lines of old or form new road districts, and shall determine the place of holding elections.

Duty of trustees. SEC. 6. It shall be the duty of the trustees to superintend, take charge of, and transact all the pecuniary concerns of the townships, they shall have a general superintendence of roads and highways within their several townships, and they shall have power to change cartways or grant new, or any other township roads.

Trustees shall be judges of elections. SEC. 7. The trustees elected as aforesaid shall be judges of all elections held within their respective townships, shall, appoint for the time being some suitable person who, together with the township clerk, shall act as clerks of the township elections.

May levy a township tax. SEC. 8. On objects of county revenue the trustees may assess and direct the collection of such taxes as may be necessary to defray the necessary expenses of the township; they shall appoint one of the constables township collector, who shall give additional bond to the treasurer in such sum as the trustees may require; *Provided however*, that in no case said assessment shall exceed half the amount of county tax.

Vacancies how filled. SEC. 9. The trustees shall fill all the vacancies that may be occasioned by the death or removal of any of the officers named in this act, and the person so appointed shall give the same bond and take the same oath as required in other cases.

Duty of township clerk. SEC. 10. It shall be the duty of the township clerk to give notice of all elections held under the provisions of this act, by setting up manuscript advertisements at three of the most public places in the township, at least fifteen days previous thereto; he shall, when convenient, act as clerk at all elections, and shall provide duplicate poll books and tally papers, and the necessary blank certificates agreeably to the forms furnished by the clerk of the circuit court, and shall provide a sufficient number of blank certificates of election, to be filled up and signed on the day of election as provided in the fourth section of this act.

Clerk shall record proceedings of trustees. SEC. 11. The clerk shall attend all meetings of the trustees and keep a fair and correct record of their proceedings in a book to be provided for that purpose by the trustees; he shall record all private roads and cartways established by the trustees, and also all changes of roads which said trustees shall make agreeably to the provisions of the 6th section of this act.

Compensation to clerk. SEC. 12. The clerk shall carefully preserve all books and papers belonging to the township, and shall deliver the same to his successor, and for keeping the township records he shall receive such compensation as the trustees may deem reasonable and just, to be paid out of the township treasury, and for his services as clerk of elections he shall be exempt from one day's work on the roads for every day he may be employed as such clerk.

SEC. 13. It shall be the duty of the treasurer to receive all

moneys belonging to the township, and pay the same over on the order of the trustees attested by their clerk, he shall produce his books and vouchers and settle with the trustees at their meeting in March, and it is hereby made his duty to prosecute on the township collector's bond for failing to collect and pay over any moneys required of them by this act, he shall deliver all moneys, books and papers to his successor, and shall receive such compensation as the trustees may deem reasonable.

Duty of treasurer. SEC. 14. That after the first election under the provisions of this act the trustees as aforesaid shall meet at the usual place of holding elections in their several townships on the first Monday in March, annually, and regulate all matters concerning road districts, and settle with the township treasurer.

Trustees may establish cartway and change roads. SEC. 15. That when any person or persons wishing to establish cart-ways or any township road, or to change a road in any of the townships, such person or persons before any road can be thus established or changed, shall give notice of such application, at least twenty days preceding such application to the board of trustees by setting up advertisements in at least three of the most public places in the township in which such road is proposed to be located or changed, and shall also present to said board of trustees a petition signed by at least twelve householders of the neighborhood through which the same may run, setting forth their reasons for such location or change.

May view & establish roads. SEC. 16. And on receiving the petition the board if they deem it expedient shall proceed to examine the route thus proposed, and on the view and examination of the proposed road they shall if they conceive that the public good require it, establish the same and make a record of the proceedings in the book in which the records of the county are kept, and when so recorded shall be deemed a public highway, and shall be opened and kept in repair as other roads and highways in the township are.

Trustees shall ex officio view and make all roads. SEC. 17. That the trustees by virtue of their office shall be commissioners to view, mark, and locate all the roads in the township for which they are chosen, except where one of them may be interested, and in that case the other two shall have power to examine and report in the same manner that they all might have done.

In what counties this law to be in force. SEC. 18. That the provisions of this act shall extend to the following counties: Carroll, Delaware, Clay, Madison, Warren, Clinton, Adams, Jay, Wells, Huntington, Whitley, Allen and Hancock.

Repealed. SEC. 19. That all laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed: *Provided*, that nothing contained in this act shall be so construed as to effect the law now in force regulating the townships in the counties of Dearborn and Switzerland.

This act to be in force from and after its publication.

CHAPTER CXII.

AN ACT concerning Vagrants.

[APPROVED FEBRUARY 17, 1838.]

Who shall be
deemed va-
grants.Habitual drunk-
ards.Justice shall is-
sue warrant.May commit va-
grant to jail or
hold to bail.Minors may be
bound out as ap-
prentices.Vagrant over
age may be hi-
red out.Wages of va-
grant how and
to whom paid.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That every person who shall be suspected to get his livelihood by gaming, and every able bodied person who is found loitering and wandering about, and not having wherewithal to maintain himself by some visible property, and who doth not betake himself to labor or some honest calling to procure a livelihood, and all persons who quit their habitation, and leave their wives and children, without suitable means of subsistence, whereby they suffer, or may become chargeable to the county, and all other idle, vagrant, dissolute persons, rambling about without any visible means of subsistence, and all persons who shall be guilty of habitual drunkenness without any visible means of support, shall be deemed and constituted as vagrants.

SEC. 2. When any such person is found in any county, any justice of the peace shall, from information, or from his own knowledge, issue his warrant to the sheriff or constable, to bring such person before him, and if upon examination, it shall appear to such justice, that he comes within the description of vagrants, agreeably to this act, he shall commit him to the jail of the county until the next circuit court, unless he enter into bond, payable to the county treasurer, in the sum of fifty dollars, with sufficient security or securities, to be adjudged of by the justice, for his appearance before the said court, and to abide the determination thereof. If upon examination it appears to the said court, that such person is within the description of vagrants, and is a minor, they shall direct the sheriff to bind him to some person of useful trade or occupation, until he shall arrive to the age of twenty-one years; and if such apprentices desert their masters, they shall be dealt with as other apprentices who leave their masters before the expiration of their apprenticeship. But if such vagrant be above the age of twenty-one years, the said court shall direct the sheriff to hire him out for any term of time not exceeding nine months: *Provided however* That if such person have a wife or family within the state, he shall be set at liberty, upon his entering into bond, with approved security, payable to the county treasurer, to return to his wife and family, and follow some useful employment for their maintainance and support.

SEC. 3. The money arising from the hire of any vagrant, shall be applied by the court towards the payment of his debts; but if he shall not be indebted, or owe to the amount of his hire, the same, or the balance thereof, shall be paid to such vagrants, at the time his or their service expires, unless he shall have a wife or children, in which case it shall be applied to their use. When any vagrant shall have entered into bond and security as last mentioned, to the county treasurer, and the

penalty thereof shall become forfeited, the court shall direct an execution to issue thereupon; having first given ten days notice to the party or parties by scire facias, that such execution will issue if no cause be shewn why the same ought not to issue against the goods and chattels, lands and tenements, of such security, the sheriff shall make distress and collect the amount as on other executions, and the money arising therefrom shall be applied towards lessening the county revenue.

SEC. 4. All justices within their respective townships, shall see that this act is executed, and all sheriffs and constables within the several counties, shall give information to such justices, of all vagrants that may be within their knowledge in their respective townships; and grand jurors empannelled for any county shall make presentment of all such persons within the county as they may suspect to be vagrants, agreeably to this act; and upon such presentment the court shall direct some justice of the peace to issue his warrant, to bring such suspected person before him, and if upon examination, it appears that they have come within the description of vagrants, the same steps shall be taken against them as are heretofore directed to be taken against vagrants.

SEC. 5. All laws and parts of laws heretofore in force respecting vagrants, shall be, and the same are hereby repealed. This act to be in force from and after its publication.

CHAPTER CXIII.

An Act prescribing the mode of changing the Venue.

[APPROVED JANUARY 23, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That in all civil suits at common law and in chancery, cognizable in any of the circuit courts of this state, now pending, or which may hereafter be pending, when either of the parties shall conceive that he, she, or they, will not receive a fair trial in the circuit court where such suit is pending, owing to the presiding judge having been engaged as counsel in the cause, prior to his appointment as judge, or that one or both the associate judges of the court in which the suit is pending, is or are of kin to either of the parties, in any of the following degrees, to wit: As father, son, brother, uncle, first cousin, or brother-in-law, or where one or both of the associate judges are interested, and the presiding judge may be of kin to one of the parties, in the manner aforesaid, or to the undue influence of his or their adversary or adversaries, or to the odium which attends the said party, or attaches to his, her, or their legal cause of action or defence, or to local prejudices, it shall and may be lawful for the party, so suspecting that he, she, or

Proceedings.

Papers to be forwarded by clerk

Expenses of removal.

Clerk, how far accountable for the papers.

Judges' order to be preserved by the clerk.

No change to the county where either party resides.

No change to a different circuit, unless the president be interested.

they, will not receive a fair and impartial trial in the court, then sustaining said suit, owing to the said causes or any of them, at any time to petition a president of the circuit, or the associate judges of the county where the suit is pending, for a change of venue, which said petition shall distinctly set forth the cause or causes, why such suspicion is entertained, and be supported by affidavit of the petitioner or petitioners, or some one of them; which being done, it shall and may be lawful for the judge or judges aforesaid, on the receipt of said petition, under his hand or their hands, to award a change of venue, and order the clerk of the court before whom the suit is then pending, to send forward the papers in said suit, by some meet person employed by such clerk to such court having jurisdiction in similar cases, as the said judge or judges may direct; and the clerk thereof shall receive such papers, giving a receipt therefor, and docketing the said suit in order with other causes, and the court to which such papers are sent, shall be and is hereby vested with full power, authority and jurisdiction, to award subpoenas for witnesses, to enforce their attendance, to grant commissions for taking depositions, to hear and determine said controversy, to award executions, and do all matters and things relative thereto, which the said court, from which the said cause was removed, might or could legally have done.

SEC. 2. That the expenses attending the removal, shall be paid by the person praying the same, and the person who shall be entrusted to convey said papers to the clerk of the circuit court, to which they shall be sent, shall and may receive the sum of eight cents, for each mile he must necessarily travel in going to and returning from said clerk's office, which sum shall be paid into the hands of the clerk of the court, where the papers originated, before they shall be delivered out of his office.

SEC. 3. That the clerk of the court in which the said suit originated, shall be answerable for the fidelity of the person he may employ to convey said papers from his office, to the office of the clerk of the court, to which they may be sent, but shall not be answerable for accidents, not arising from neglect.

SEC. 4. That the venue in no case shall be changed, unless the party who prays the same shall deposit the order of the judge or judges removing the same, together with the petition aforesaid, which shall be carefully preserved by the clerk, and also the necessary expenses attending the removal, with the clerk having custody of the papers, at least thirty days before the court, to which the said suit shall be set for trial.

SEC. 5. No change of venue shall be granted, so as to have the cause sent to either of the counties, where the parties may reside, nor shall there be more than one removal of the same cause.

SEC. 6. No change of venue shall be granted, so as to take the cause out of the circuit, where the suit is commenced, unless the president of the circuit be interested or prejudiced, nor until the party applying for such change, shall produce to the judge, to whom such application is made, sufficient proof that the opposite party has had ten days previous notice in writing.

of the time and place such application is intended to be made. Notice. or in case of absence out of the county or state, to his, her, or their agent or attorney in fact, or attorney at law, which notice shall be certified by the judge granting such change, to the clerk where the suit was commenced.

SEC. 7. If any person wishing to obtain a change of venue, shall have given notice to the opposite party, as is provided by this act, and shall fail to attend on the day and at the place appointed, or shall attend and shall not make out sufficient cause as aforesaid, he shall pay to the opposite party five dollars for his false clamor, to be taxed by the clerk and collected as other costs; and in order the better to carry this section into effect, the judge or judges before whom the application is made for a change of venue, shall file the petition and other papers in the clerk's office, with his decision thereon.

An Act prescribing the mode of changing the Venue in criminal cases.

[APPROVED FEBRUARY 19, 1838.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all criminal causes now pending, or which may hereafter be pending, in any of the circuit courts of this state, when any defendant or defendants shall conceive that he, she, or they, will not receive a fair and impartial trial in such court, where said cause is pending, owing to the prejudice of the presiding judge or of the associate judges of said court, or to local excitement and prejudice against said defendant or defendants, it shall and may be lawful for such defendant or defendants to petition such circuit court for a change of venue, as in civil cases, which change of venue the said court may at its discretion award.

SEC. 2. Such change of venue shall be governed in all respects as far as is consistent, by the provisions of an act entitled, "an act prescribing the mode of changing the venue," approved January 28, 1824, except that the second and fourth sections of said act shall not extend to the cases embraced in this act.

This act to take effect and be in force from and after its passage.

CHAPTER CXIV.

AN ACT regulating weights and measures.

[APPROVED JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana,* That the several boards of county commissioners

County com's to
procure mea-
sures and
weights.

within this state, be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights for the use of their county, that is, one measure of one foot or twelve inches, English measure, so called; also, one measure of three feet or thirty-six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand and seventy-five and one-fifth solid inches; also, one gallon measure, which shall contain two hundred and thirty-one solid inches; which measures are to be of wood or any metal the court may think proper; also, one set of weights commonly called avoirdupois weight, and sealed with the name or initial letters of the county inscribed thereon; which weights and measures shall be kept by the clerk of the circuit court of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

To be kept by
the cl'k of cir-
cuit court.

When procured,
notice to be
given.

Persons selling
by other weights
and measures fi-
nable.

Cl'k to seal
weights, &c.

SEC. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for one month; and any person who shall thereafter buy or sell any commodity whatsoever, by measures or weights, that shall not correspond with the county weights and measures, shall for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county seminary where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county. Every person or persons desirous of having his, her or their weights and measures, tried by the county standard, shall apply to the clerk of the circuit court of the county in which he shall live, and if they correspond with the county standard, the clerk shall seal them with the seal provided for that purpose.

CHAPTER CXV.

AN ACT repealing all laws and parts of laws now in force granting premiums for wolf scalps.

[APPROVED, FEBRUARY 17, 1838.]

Repeal.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all laws and parts of laws that grant premiums out of the state or county treasury for wolf scalps be, and the same are hereby repealed.

This act to be in force from and after its passage.

OFFICE OF THE SECRETARY OF STATE,
INDIANAPOLIS, INDIANA. }

I, WILLIAM J. BROWN, Secretary of state, certify that I have compared the foregoing acts printed, with the original rolls now on file in my office, and find them correctly printed, except the words included in brackets, thus [], which are either taken from the engrossed bill, or inserted to supply evident omissions.

In testimony whereof, I have hereunto subscribed my name at Indianapolis, the 27th day of August, 1838.

WM. J. BROWN.

EXPLANATIONS
OF
TECHNICAL TERMS AND PHRASES
USED IN THE LAWS.

PREPARED BY THE SECRETARY OF STATE, IN OBEDIENCE TO A JOINT RESOLUTION OF THE GENERAL ASSEMBLY.

- Administrator de donis non.* Administrator of the goods not administered by a deceased executor or administrator.
- Ad quod damnum.* To what damages; a writ to assess damages for obstructing water courses, &c.
- Alias.* Otherwise; a second writ when the first is not served.
- Bona fide.* With good faith.
- Capias ad respondendum, (capias.)* A writ commanding that the body of the defendant be taken to answer to the action.
- Capias ad satisfaciendum, (ca. sa.)* A writ commanding that the body of the defendant be taken in execution, to satisfy the judgment.
- Cepi corpus.* A return to a capias writ that the body is taken.
- Certiorari.* A writ to an inferior court, commanding that the proceedings in a cause be certified to a superior court.
- Cestui que trust.* He for whom the trust is; the person for whose benefit a trustee holds an estate.
- Choses in action.* Things in action, as bonds, notes, &c.
- De bene esse.* Conditionally.
- De novo.* Anew. A *venire de novo* is awarded when a new trial is granted after a verdict.
- Dedimus potestatem.* A commission usually sent by a court to some individual or judicial officer, authorizing him to take and transmit testimony.
- Demur.* } Is an issue of law to be tried by
Demurrer. } the court.
- Distress infinite.* A writ commanding the property of a person to be distrained until he shall appear in court and file special bail.
- Emblements.* The profits of lands which have been sowed.
- Estate per autre vic.* The interest which one has in lands during the life of another.
- Exoneretur.* A discharge of special bail, entered after the surrender of the principal.
- Ex post facto.* After the act.
- Ex parte.* On the part of one only.
- Ex officio.* By virtue of the office.
- Feme covert.* A married woman.
- Feme sole.* An unmarried woman.
- Fieri facias.* A writ of execution commanding that the judgment be made of the estate of the defendant.
- Garnishee.* The party in whose hands another's money is attached.
- Guardian ad litem.* Guardian during suit.
- Habeas corpus.* A writ commanding that a person in custody, be brought before a court or judge, for the purpose of investigating the legality of the imprisonment, &c.
- Habere facias possessionem.* A writ commanding that the sheriff give possession of lands, to him who has recovered in ejectment or disseisin.
- Instante.* Immediately.
- Jury de meitate lingua.* A jury composed of one half foreigners.
- Levavi facias.* A writ of execution by which land is ordered to be levied.
- Livery of seisin.* A delivery of possession of lands.
- Mandamus.* A writ issuing from a superior court, to some officer, corporation or tribunal, commanding some official act to be done.
- Malfeasance.* A corrupt performance of some official duty.
- Mesne process.* Intermediate process; the writ by which the defendant is brought into court.
- Minimum price.* Smallest price.
- Misfeasance.* An improper performance of some official duty.
- Moicty.* One half.
- Ne exeat.* A writ to restrain an individual from departing the state.
- Nihil.* A return upon a scire facias, where it is not executed.
- Nihil dicit.* } The name of a judgment where no
Nil dicit. } defence is pleaded.
- Nihil debet.* } The plea of general issue to an ac-
Nil debet. } tion of debt.
- Non compos mentis.* Not of sane mind.
- Non sum informatus.* An answer by an attorney, when he has nothing more to say for his client.
- Non est inventus.* A return to a writ of capias where the defendant is not found.
- Non est factum.* A plea denying the execution of a deed or specialty sued on.
- Non assumpsit.* The plea of general issue in an action of assumpsit.
- Nonfeasance.* Non performance of an official act.
- Nuncupative will.* A will made before witnesses, declared by word of mouth only.
- Nolle prosequi.* Is entered by the prosecuting attorney, when he dismisses or will not further prosecute an indictment.
- Oyer.* To hear. To crave oyer, is to demand the reading of the bond or other writing sued on.
- Perol evidence.* Evidence by word of mouth.
- Prima facie.* On the first appearance. Prima facie evidence, is that which is sufficient, until obviated by evidence from the opposite party.

Passé comitatus. Power of the county.
Plene administravit. A plea by an administrator that he has fully administered.
Pluries. Often times; a third writ issued, where a first and second have not been executed.
Pro confesso. For confessed.
Profert. A party makes *profert*, when he brings into court the written instrument upon which he relies in his pleadings.
Qui tam. The name of an action in which the plaintiff sues as well for himself as for the state or public, and in which he is entitled to a part of the judgment recovered.
Quo warranto. A writ requiring the person or body corporate to whom it is directed to shew cause why he or they claim to perform a particular function.
Quare clausum freget. The name of an action of trespass to real property, or for breaking and entering the plaintiff's close.
Quietus. Acquittance.
Subpœna. The name of a writ, generally applicable to summoning witnesses.
Supersedeas. A writ to stay proceedings until the appellate or supreme court shall reverse or affirm the judgment of the inferior court.
Scire facias. The name of a writ requiring the defendant to show cause why execution should not issue upon a judgment or recognizance.
Scire feci. The return to a writ of *scire facias*.

when it is served.

Talesmen. Such men as are not regular jurors, taken from the by-standers to complete the regular panel.

Tenancy by courtesy. Is he who marries a woman possessed of lands in fee-simple, and has by her a child which comes alive into the world. By virtue whereof he has a life estate in the lands.

Tenant in dower. Is a woman possessing lands which were the property of her deceased husband, and to which she is entitled during her life.

Terretenant. Tenant of the lands.

Testatum fi. fa. or ca. sa. Is a writ issued to another county, in which writ it is testified or suggested that the defendant is not found, or has no property in the first county.

Tort. Wrong.

Vanire facias. A writ commanding the proper officer to summon a jury.

Venue. Vicinage; neighborhood. The county or township, in which the action is laid.

Viet armis. With force and arms. This phrase is applicable to actions of trespass.

Vina voce. With the living voice. By word of mouth.

Venditioni exponas. A writ commanding the officer to offer for sale, property previously levied, by virtue of a former execution.

INDEX.

The figures refer to the pages; the dashes and inverted commas under the figures, denote the same page.

A		ADULTERY.	
		See crime and punishment	217
		Charge of, actionable	452
ABETTING CRIMES.		AFFRAY.	
See crime and punishment	219	See crime and punishment	212
ACT OF VIRGINIA.		AGENT, COUNTY.	
See session N. W. Territory	19	How appointed and his duties	506
ACTS OF CONGRESS.		AGRICULTURAL SOCIETY.	
Ordinance for the government of the territory N. W. of the Ohio river	23	Citizens may meet and form society	63
Act to provide for the government of the territory N. W. of the river Ohio	28	Township societies may be formed	64
" To divide the territory N. W. of the Ohio into two separate governments	29	Officers	—
" Dividing the Indiana territory into two separate governments	30	Corporation created	65
" To enable the people of Indiana to form a state government, &c.	32	Board of managers	—
" Respecting fugitives from justice, and persons escaping from the service of their masters	332	County board may appropriate money	—
		Withdrawal of membership	—
		Governor may appoint state board of agriculture	66
		Duties of the board	—
		Annual meeting, where held	—
ACTIONABLE WORDS.		ALIENS.	
Adultery, fornication, &c., declared to be, without shewing special damage	432	See naturalization	54
		May purchase real estate	67
		Declaration of intention to become citizen	—
AD QUOD DAMNUM.		ALTERING BRANDS, MARKS, &c.	
Writ in what case to be issued	59	See crime and punishment	211
Application, how to be made	—	ANIMALS.	
Jury to be summoned	—	Trespassing may be distrained	264
Jury to view and examination	60	Going astray (see estrays)	266
Inquest to be returned to next court	—	ANSWERS IN CHANCERY.	
Proceedings thereon	—	See practice in chancery	438
Writ, how obtained after building a mill	—	APPEAL.	
Application when made if lands are divided by a stream	—	Appeal may be taken from J. P. in regard to apprentices	69
Duty of the court on the return of writ	—	" From judgment of J. P. in domestic attachment	73
Applicant to pay damages	61	" From trial of right of property	—
Shall begin to build within one year	—		
Damages estimated shall not bar action for injuries	77		

in domestic attachment	74	tions of revenue laws; (see county treasurer; revenue)	161
" Not to be taken from judgment on delivery bond, without affidavit	148	ASSYLUMS.	
" How taken from decisions of county boards to circuit court	156	May be erected by county board	437
" To supreme court from circuit court, (see courts supreme)	202	ATTACHMENT DOMESTIC.	
" From probate court to supreme or circuit court	170	When and how issued	72
" Establishment or valuation of a ferry to circuit court	306	Creditor's oath and bond	—
" Trial of forcible entry and detainer to circuit court	310	Justices' jurisdiction	—
" Assessment of fine by J. P.	362	Return of attachment	—
" Justices' judgment to circuit court	383	How executed by constable	—
" Trial on <i>ne exeat</i>	385	Inventory of goods attached	—
" Order of removal of pauper	434	Notice of pendency of suit, how given	73
		Justices may render judgment	—
		Appeal	—
APPRENTICES.		Lands how attached	—
Subject, manner and term of apprenticeship	67	When clerk of circuit court shall issue writ	—
Indenture to be acknowledged	68	Sheriff's duty	—
Apprentice to be taught, &c.	—	Lien from time of levy	—
Mode of redress for misusing apprentice	—	Suit to be docketed	—
Order of circuit court	—	Notice how given in circuit court	—
Contracts by apprentices void	—	Judgment when to be rendered	—
Absconding apprentice may be reclaimed	69	Continuance	74
Apprentice to remunerate lost time	—	Proceedings when special bail is entered	—
Suits may be brought by father or guardian.	—	Jury trial	—
		Claims of property attached, how tried	—
ARBITRATIONS.		Costs on trial on claim, &c. how taxed	—
What cases may be arbitrated	69	Appeal from trial of right of property	—
Parties to enter into bond	70	Bond to be given in case of appeal	—
Time and place of arbitration	—	Suit on forfeited bond	—
Clerk to issue subpoena	—	Garnishee when and how summoned	—
Cost how taxed	—	Garnishee how notified	71
Award of arbitrations how made	—	Responsibility of garnishee to plaintiff	75
How confirmed, and how set aside	71	Continuance as to garnishee	—
Allowance to arbitrators	—	Costs in garnishees' case how taxed	—
Award on mutual accounts	—	Garnishee, when held to bail	—
		Other creditors may file claim	—
ARSON.		Final, when and how rendered	76
See crime and punishment	210	J. P. may certify suit to circuit court	—
		Accounts how adjusted and paid	—
ASSAULTS.		Plaintiff may not discontinue	76
Assault with intent to commit felony	212	Stay of execution	—
Assault and battery	—	Lien of consignee	—
Assault	218	Attachment from circuit court to supersede proceeding by J. P.	—
Assaulting peace makers	223	Circuit court to render judgment	77
		Constable not liable in a superseded case	—
ASSESSORS.		Attachment prohibited when def't bona fide settled	—
Shall ex officio prosecute for viola-	—		

Attachment may issue on the Sabbath	—	Attorneys may be debarred for failing to pay over money collected	86
Suit when writ is wrongfully issued	—	How restored	—
State may have attachment	—	Attorneys debarred may appeal	—
Jurisdiction of circuit court when property is in different counties	78	ATTORNEYS PROSECUTING.	—
Where garnishee fails to plead	77	How elected	—
The court may enforce interlocutory or final decrees	—	Prosecutor's duty	87
Writs cannot be discharged when there are other creditors	79	Oath and bond	—
Trustees may have benefit of writ	—	Bond to be forwarded to secretary's office	—
Alias writs may issue	—	Vacancies how filled	88
		Salary	—
ATTACHMENT FOREIGN.		Duty of prosecutor in fifth circuit	—
Alias writs may be issued by J. P.	—	Compensation of special prosecutor	—
Non-resident's property liable to attachment	80	Amount chargeable to regular prosecutor	—
Jurisdiction of the court	—	AUDITOR AND TREASURER.	89
Property of joint owners	—	Auditor's bond	—
Of non-resident heirs	—	Duties	—
Statement of demand	—	Transfer of books and papers to auditor	—
Oath of bond	—	Penalty for failing to deliver over books	—
Officers to proceed as in domestic attachment	—	Auditor to deliver over books to treasurer	—
Return of writ of notice	—	How auditor's books shall be kept	90
Continuance two terms	—	Shall report to General Assembly	—
Court may order sale	—	List of lands sold by U. S. to be annually procured	—
Notice of sale	81	Auditor's salary	—
Other creditors may file claims	—	Treasurer's bond	—
Creditors to give bond	—	Treas'r shall receive state revenue	91
Garnishee may be summoned	—	Treasurer's books, how kept	—
Jurisdiction of justices of the peace	—	Treasurer shall report to Gen. Ass.	—
Proceedings by justices of the peace	82	Vouchers, how given, &c.	—
Continuance after publication	—	Treasurer's monthly accounts	—
Justices shall notify defendant and proceed to trial	—	Penalty for misapplying funds	—
Property to be redeemed to defendant on his giving bond	—	Committee shall examine treasurer's and auditor's office	92
Appeal to circuit court	—	Treasurer's duty to seminary lands	—
When claim exceeds \$100 J. P. shall certify case to circuit court	83	Treasurer's salary	—
Suit on bond, by whom brought	—	Salaries of state officers, when payable	—
		Treasurer's bond as superintendent of loan office (see college fund)	139
ATTORNEYS.	84	AUTHENTICATION.	—
License, how granted	—	Of guardianship from other estates	171
Certificate of good moral character	—	" deeds made in other counties	313
Names of attorneys to be enrolled in supreme courts	—	" " made in other states	—
Judges may strike names from roll	—	" wills made in other states	314
Judges may punish attorneys for contempt	—	" deposition by J. P.	369
Judges may not practice law	—	" " by J. P.	452
Attorneys shall take an oath	—	" bail piece from other states	454
Attorneys from other states may be admitted on examination	85	" " from other counties	—
Fees, how recovered back	—	" the public acts, records and judgments	—
Suitors may appear in court and prosecute	—		

judicial proceedings of the courts of the U. S.	471	Specie payment of notes	"
" records of board of int. imp. how authenticated	276	Payment refused holders entitled to interest	95
AVOWRY.		Branches responsible for each other	"
For rent may be general	477	Process on whom served	"
AWARD.		Copy of process left at bank have good service	"
See arbitrations	70	Directors to be notified of suit against branches	"
See justices of the peace	370	Suits when to be brought	"
B		No stay of execution	"
BAIL.		Interest chargeable at bank	"
Special bail how entered in domestic attachment	74	Dividend of profits among stockholders	96
Garnishee may be held to,	75	Fund retained for education in lieu of other tax	"
Special bail may be entered in vacation in attachment	77	Ratio of taxation	"
How entered in foreign attachment	80	Persons ineligible to office in bank	"
Amount of, to be taken by the sheriff on recognizance or attachment shall be recorded by circuit court	221	Notes by whom signed and when payable	"
Having paid the judgment, bail may recover the amount on motion	235	Lands mortgaged to the bank sold for tax, how redeemed	"
Special bail how taken by J. P.	367	May receive public deposits	"
When bail may be entered and execution recalled	374	Shall not buy or sell goods	"
Remedy for surety fearing insolvency of principal	375	Articles receivable on deposit	97
Special bail in recognizance before justice of the peace may surrender at any time	382	Issue of notes under \$5 prohibited	"
Bail may have <i>ne exeat</i> vs. principal	386	Account open with commissioner of sinking fund	"
In what actions bail shall be required. (See practice at law)	445	No other branches to be located	"
Special bail in circuit court may surrender at any time before judgment vs. the bail	454	Agent may be appointed	"
BAIL PIECE.		Scire facias, when and for what cause to issue	97
From another state how authenticated	454	Counsel to be employed	98
From another co. how authenticated	"	Annual meeting of stockholders	"
BANK.		Certificates of stock transferable	"
State bank and branches created	92	Penalty for refusing to permit examination	"
Directors to locate branches	93	Stock may be sold on execution	"
Districts	"	Rules concerning voting for directors	"
Additional branches to be located	"	President and directors, &c. ineligible to a seat in the legislature	99
Branch failing to organize may open books annually thereafter	"	President of bank, how elected	"
Office of bank	94	President's duty	"
Meeting of directors	"	His salary	"
Corporate powers	"	Four directors to be elected by Gen. Assembly	"
What real estate may be held by b'k	"	Directors removable by joint resolution	"
Conveyance of real estate	"	Vacancies how filled for president	"
		One director to be elected annually	"
		Revenue to be received and paid out by state bank	"
		State bank to appoint cashier	100
		Power of state bank over branches	"
		Examination of branches by directors	"
		Powers in such examination	"
		State bank to require reports from branches	"
		Branches may be suspended	"

Receiver appointed to take charge of effects	101	A portion of the stock may be withdrawn from one branch to another	106
Receivers authority to act	"	Commissioners to open subscription books, how appointed	107
Debts of a failing branch how paid	"	Duty of commissioners	—
Branches how reimbursed for advances	"	Mode of reducing stock in case of excess	—
Effects of failing branches after payment of debts	"	Notice for payment first instalment	—
Order of suspension how made	102	Notice of election of directors	—
Regulations respecting suits	"	Duty of commissioners in case of non-payment	108
Election of branch directors	"	Individual stock, how paid	—
Order for new election when to be made	"	State stock, how subscribed and paid	—
Dividends, how regulated	"	Governor's proclamation authorizing bank to commence operations	—
Interest unpaid not included in dividends	"	By-laws to be delivered to each branch	—
Dividends when declared	"	Forfeiture for nonpayment of instalment	109
When and for what cause branches may be closed	"	Dividends on state stock paid to com'r of sinking fund	—
Accounts to be kept with branches	103	Discounts shall not be made to stockholders to pay dividends	110
Record of proceedings	—	Loans shall not be made for the organization of any new branches	—
Salaries of president of branch bank, how apportioned among	103	Debts to or from bank shall not exceed twice the capital paid in	—
Subscription books to be preserved	—	Individual liability of directors in case of excess	—
Plates for bank paper	—	Absent directors may be exonerated from liability	—
Bank paper to be delivered to branches	—	Absent directors failing to give notice, deemed concerned	—
Quorum	—	Insolvency, when deemed fraud	111
Annual report from state bank	—	Liability in case of fraud or insolvency, &c.	—
" " from branches	104	Money due to creditors in case of insolvency, how paid	—
Oath of officers	—	State shall contract a loan	—
Election of branch directors	—	Faith of state pledged	112
President and cashier of branches, how chosen	—	Loan drawn by instalments	—
Vacancies in the board, how filled	—	Bonds for loan to be issued by commissioner	—
No compensation to branch director	—	Compensation to commissioner	—
Who may be branch director	—	Report to general assembly	—
Seat may be vacated	—	Powers of first president and directors	113
Persons ineligible for director	105	Banking powers to close in 1857	—
Officers of each branch to give security	—	Powers reserved to legislature	—
Journal to be kept open for inspection	—	Sinking fund created	—
Elections to be viva voce	—	For what purposes reserved	—
By-laws of the branches	—	Board of commissioners, and their duty	114
Rules to be observed by directors	—	Their further duty in paying interest on loans	—
No corporation shall be indebted to bank more than \$5000	106	Record of acts &c. to be kept	—
Board of directors to examine cashing accounts	—	Shall make report to legislature	115
No person to receive dividends while indebted to bank	—		
Penalty for making false entries	—		
Penalty for embezzlement	—		
Capital stock \$1,600,000	—		
Capital stock to be divided equally among branches	—		

Oath of board of commissioners	115	BONDS OF PUBLIC OFFICERS.	
Right reserved to legislature	—	Citation to give additional security	123
Directors may be employed as ag'ts of the board	—	Proceedings to enforce security	—
Increase of capital stock	116	Attachments for failing to comply	—
Discounts may be extended	—	BRANDS.	
Rights reserved by the state	—	Of cattle, &c., penalty for altering	211
Books may be opened for stock in any of the cities of the U. States	—	BREACHES ON PENAL BONDS.	
Standard for the computation of interest	—	How assigned	449
State directors, how appointed	—	In suit on, defendant may bring money into court	—
Trustees of congressional townships may subscribe stock	117	BRIDGES.	
Branches may contract for the receipt of public funds for the state	—	Penalty for travelling faster than a walk across a bridge	124
Restrictions in the purchase of promissory notes	—	Supervisor shall post up notice	—
Counties added to 12th district	—	Bridges, how constructed over canals	126
Authority to locate twelfth branch	—	County board may direct supervisor to build a bridge or appoint three commissioners	500
Additional branches to be located	118	May authorize bridge to be built as ferries are granted	—
BEEF.		(See roads and highways)	—
Inspection of	335	BURGLARY.	
BOARD OF INTERNAL IMPROVEMENT.		See crime and punishment	207
Records, how authenticated	276	C	
(See internal improvement)	—	CANALS.	
BONDS, NOTES, AND BILLS OF EXCHANGE.		Penalty for wilful injury to public works	124
What notes &c. are assignable	118	Penalty for wanton interference with canals	125
How assigned	119	For driving on tow path	—
Assignee may sue in his own name	—	For obstructing canals	—
Action vs. endorser	—	Wharves, basons, &c., prohibited	—
Notes payable at a chartered bank, negotiable as inland bills of exchange	—	Bridges across canals, how built	126
Bills of exchange, drawer and endorser subject to damages for non-payment	120	Penalty for not conforming to specification	—
Bills to bear interest	—	Kind of boat authorized to navigate canals	—
BOATS, SEIZURE OF.		Spikes, bolts, &c., prohibited	—
Lien upon boats	120	Boats to have guard plates	—
Declaration	121	Bow line required	—
Proceedings when certified to circuit court	—	Pointed starting poles prohibited	127
Boatmen's wages	—	Velocity of floats	—
Owner may give bond and have the boat discharged	—	How to pass a lock	—
Steam boat failing to deliver freight, liable	—	Penalty for violating regulating provisions as to locks	128
Remedy when captains fail to pay for provisions or materials for repairs,	—	Penalty for wilful obstructing canal	—
What shall be service of process	122	Penalty for injuring mechanical structure	—
Liability for obstructing process	—	Toll rates, how established	—
	—	Collectors of toll and their duties	—
	—	Collectors to give bond	129

Their term of office	129	CHILDREN, ILLEGITIMATE.	
Collectors to inspect cargoes and grant clearances	—	(See illegitimate children)	—
Certificates of registry of boats	—	CIRCUIT COURTS.	
Name of boat and owner registered	—	(See courts, circuit)	—
Charge of name to be registered	130	CLAIM OF PROPERTY.	
Name of boat to be painted on it	—	(See right of property)	—
Masters to exhibit clearances	—	CESSION.	
Penalty for not delivering bills of lading	—	Of the N. W. territory	19
Penalty for signing false bills of lading	—	Concerning territory ceded from Virginia to U. S.	22
Bills of lading to be sworn to	—	Concerning the erection of Kentucky into a state	—
Separate clearances	—	CLERKS.	
Tonnage	—	Clerk of supreme court where to keep his office	134
Master liable for tolls	—	Office hours of clerk of c. c.	—
List of passengers	131	Books and records, how kept	135
Permit, how granted	—	Fee bills, when to be issued	—
Boats navigating without authority	—	Clerks to administer oaths	—
Authority to navigate, how obtained	—	Responsible for deputies	—
Accounts of toll, how kept & paid	—	Fi. fa. not to issue on justices transcripts	—
U. S. property free of tolls	—	Oath of clerk of supreme court	135
Penalties how, collected, &c.	132	Bond of clerk of supreme court	—
Additional rules, how made	—	Bond to be filed and recorded	—
Land, how taken for hydraulic purposes	—	Oath of clerk of circuit court	—
State and county roads, how changed	133	Bonds of clerk of circuit court	136
Returns of change of road made to clerk's office	—	Bonds, when recorded	—
Loan for W. and E. canal	—	Copy of bond to be evidence	—
Lands, how selected	134	Chancery causes, how certified up to circuit court	—
Engines for rail road to be purchased	—	Clerk shall approve bonds of sheriff, &c.	—
CA SA.		Clerk of supreme court to preserve papers	—
When to issue to circuit court	281	Shall docket causes in order	—
Issued to foreign county, how executed	—	Proceedings of supreme court to be drawn up	—
How prisoner under, may be discharged	—	Complete record by clerk of circuit court	—
When to issue from J. P.	381	Record of clerk of supreme court	—
May issue on the Sabbath	386	Conveyances recorded evidence	137
From another county, how executed	454	Clerk c. court to lay before board statement of seminary fund	—
Property given up on, how sold	283	Clerks pro tem., how appointed	—
CHANCERY.		Clerks to remove office to fire proof buildings	—
Causes in circuit court, for what, and how certified to supreme court	136	Clerks shall be allowed for record book	—
Jurisdiction of circuit court in	161	Clerk shall receipt for jury fees	—
“ of probate court	173	Clerk to register names of justices	138
(See practice in chancery)	—	Compensation	—
CHALLENGE.		Clerk shall perform services for revolutionary soldiers without fees	—
To jurors in probate court	175	Provisions shall apply to soldiers of late war	—
“ Fight a duel	211		—
“ Jurors in state prosecutions	220		—
“ Jurors, peremptory in c. court in civil cases	453		—

Clerks may administer oaths in certain cases	139	Board shall divide county into highway districts	155
Clerk may adopt his own seal	"	Vacancies in township offices, how filled	"
" shall report jury fees collected, to county treasurer semi annually	137	Certificates of election, how delivered	"
CONSTITUTION.			
Of the United States	7	Board shall erect ct. house, jail &c.	"
Amendment	17	Board shall appoint trustee of seminary	"
Of the state of Indiana	36	Oath and bond of trustee	"
CORONERS.			
See sheriffs and coroners	564	Board shall make allowance to clerk and sheriff	"
Fees of coroners	293	Board shall erect pound and appoint pound keeper	156
CORPORATIONS.			
When dissolved to vest in state	149	Duties of pound keeper	"
Duties and trusts to be performed by auditor and treasurer	"	Penalty of pound keeper for neglect of duty	"
Distribution, how made	150	Appeal from decisions of county board to circuit court	"
Process against shall be a summons	445	How appeal shall be made	"
COUNTY BUSINESS.			
County boards organized	150	Who may appeal	"
Three commissioners to be elected	"	Notice to appellee	"
Term of service	"	Board shall adopt necessary and proper rules for their government	"
Commissioners' oath	151	Seminary building, land for, to be conveyed to county	157
Corporate name and powers	"	Seminary, records relative to, how kept	"
County boards, when and where to meet	"	Indiana college, com'rs shall select students for	"
Clerk of c. c. to be clerk	"	Board may appoint commissioner to expend 3 per cent. fund	"
Preference of claims vs. county	"	Board may exempt persons from taxation	"
When board is divided, cause to be continued	152	Board may administer oaths	"
Seal, and authenticated	"	" " have power to enforce order	158
Statements of receipts and expenditures	"	Allowances, how made	"
Com'r, penalty for neglect of duty	"	Commissioners shall make allowance for apprehension of horse thieves	"
Com'r district, how formed	"	(See county treasurer; revenue; roads and highways; poor; elections general; elections township and co. ferries; jurors; surveyors.)	"
Vacancies in boards, how filled	"	COUNTY TREASURER.	
Duties of county boards	153	How appointed	"
Compensation	"	Shall receive and disburse moneys, keep accounts, make report to co. board, and make annual settlements	"
Proceedings before present boards, continued	"	Shall prosecute delinquent collector of revenue and jury fees	"
Contracts to remain valid	"	Shall pay county orders according to precedence	"
Books, how kept, and county orders, how issued	"	Shall receive county orders from collector without regard to precedence	"
County orders may be divided	"		
Certain claims, how paid	"		
Collector shall receive county orders	154		
Coll. prohibited from taking county order under par	"		
Penalty	"		
Township officers shall be elected, and how	"		
Proviso, as to Dearborn and Switzerland counties	"		
Duties of township officers	"		

Per centum of	159	Act defining the powers and duties of circuit court	164
May be removed from office by co. board	"	President judges may hold courts in other circuits	"
License to sell merchandize, how granted	160	Act regulating the courts in the 1st and 6th judicial circuits	"
Form of license, and effect thereof	"	When courts shall be held in the 1st circuit	"
How granted in vacation	"	" " " " Jasper co.	165
Treasurer shall receipt for money paid to obtain license	"	" " " " 6th circuit	"
Tax on exhibitions, shows &c. how levied by treasurer	"	When commissioners and probate courts fall on same days of circuit court	"
Clerk's fee for certificate	"	Process, how returnable	166
Tax on shows &c. may be added by trustees of towns	"	Act for the formation of the 2d and 3d judicial circuits	"
Sheriffs, collectors, constables &c., shall prosecute under this act for violations	161	When courts shall be held in the 2d circuit	"
COURTS, CIRCUIT.			
State to be divided into circuits	"	" " " " 3d " "	167
Style of court and seal	"	" " " " 4th " "	"
Shall consist of president and two associates	"	" " " " 5th " "	168
Oath of judges	"	" " " " 7th " "	169
Declared to be courts of record	"	" " " " 8th " "	"
Jurisdiction of, in law and chancery	"	" " " " 9th " "	"
Judges may issue writs of habeas corpus, injunction and ne exeat, in vacation	162	County of Starke attached to Marshall	170
May take recognizances payable to state	"	Jurors, how to serve	"
Shall return recognizances to next circuit court	"	Writs, subpœnas, &c., how returnable	"
May issue process to other counties on forfeited recognizances, and against persons indicted or outlawed	163	Laporte county, special term in, and how regulated	"
May issue subpœnas for witnesses to other counties	"	Laporte county clerk of, to make docket for special term	171
May issue commissions to take depositions	"	Jurors, how drawn	"
Style of process, and how tested	"	Cass county, special term	"
Shall be no discontinuance for want of a quorum of judges, but a judge or sheriff may adjourn court	163	Jurors, how drawn	172
Associate judges, compensation of	"	Process, how returned	"
Court shall make allowances to officers for extra services	"	State to be divided into circuits	161
Causes undetermined, shall be continued till next term	"	Style of court and seal	"
Court may administer oath	"	Shall consist of president and two associates	"
" may punish for contempts	"	Oath of judges	"
President judge may grant restraining order in vacation	"	Declared courts of record	"
Notice of application to be given, and may be served in writing	"	Jurisdiction of, in law & chancery	"
Right to enjoin shall remain	"	Judges may issue writs of habeas corpus, injunction, and ne exeat in vacation	162
Proceedings of each day to be drawn up, read and signed	164	May take recognisances, &c. payable to state	"
		Shall return recog's to next c. court	"
		May issue process to other counties on forfeited cognizances, and against persons indited or outlawed	"
		May issue subpœnas for witnesses to other counties	"
		May issue commissions to take depositions	"
		Style of process, and how tested	"

There shall be no discontinuance for want of a quorum of judges, but judge or sheriff may adjourn court	163	qualified in open court	177
Associate judges, compensation of	"	Administrator and executor shall give bond	"
Courts shall make entries of all allowances to officers for extra services	"	Bonds made payable to the state of Indiana	"
Causes undetermined shall be continued to next term	"	Suits on bond	"
Court may administer oaths	"	Letters of administration, when revoked	"
" punish for contempts	"	" " with will annexed, when granted	178
President judge may grant restraining order in vacation	"	Clerk may grant letters of, in vacation	"
Notice of application to be given & may be served in writing	"	Clerk shall take bond	"
Proviso, that right to enjoin shall remain	"	Court may affirm or revoke letters	"
Proceedings of each day to be drawn up, read and signed	164	Clerk shall not grant letters until the expiration of fifteen days	"
Act defining the powers and duties of circuit court	"	Right may be contested	"
President judges may hold courts in other circuits	"	Estate going to waste clerk may issue letters, &c.	179
		When executors shall fail to apply for letters	"
		Act organising probate court	172
		Probate judge, how elected	"
		Term of office	"
		Vacancy, how filled	"
		Certificate of qualification	173
		Oath of office	"
		Style and jurisdiction of	"
		Concurrent jurisdiction	"
		Process and orders, how issued, and effects thereof	"
	155	Chancery powers	"
		May grant change of venue	174
		Seal of probate court	"
		Where circuit court shall have jurisdiction	"
		Clerk and sheriff proper officers of the court	"
		Clerk shall keep a record of all suits, judgments, &c. docket suits, and keep a complete record and docket issues for trial	"
		Sheriff's duty	"
		Trial by jury	"
		Jurors compelled to attend	"
		" compensation of	175
		Jurors may be summoned as at common law	"
		Desperate debts, &c. may be compounded by administrator or executor	184
		In compounding creditors shall have preference	185
		Ex'r or adm'r chargeable with avails	"
	177	Assignee may sue thereon	"
		Insolvent estate, how settled	"
		Real estate may be made assets	"
		Complaint may be filed setting forth the condition of the estate and	"

COURT, FEDERAL.

May be held in supreme court room 464

COURT HOUSES.

How erected 155

COURTS, PROBATE.

Venire de novo, in case of new trial 175

Witness may be summoned and depositions taken

Writs, how and when to issue

Judgment by default, when parties fail to appear

Jurisdiction in issuing process co-extensive with the state

Shall have same power as circuit court to execute decrees, &c.

Stay of execution same as in c. c. 176

Appeals to supreme court

How supreme court shall proceed

Appeals may be taken to circuit c.

Circuit court shall hear and determine causes

When president judge is interested, &c.

Administration, letters of, and letters testamentary, when granted

Executor failing to qualify, administration may be granted to widow 177

Widow failing to qualify, administration may be granted to highest creditor

Administrator and executor to be

praying relief	185	Amount of sales, how kept and filed	181
Court or judge shall order creditors to be notified	"	Executor or administrator bound for value of sales	"
No suit shall be brought vs. adm'r or ex'r unless for fraud, &c. after complaint filed	"	Shall pay debts of estate, and order of payments	"
If complainant shall fail to establish fraud, &c. he shall pay costs	186	Shall not give preference to claims except as enumerated	"
Final decree, how made and how adjusted	"	In case of suit may plead debts of a prior claim	"
Either party may demand trial by jury if over \$20	"	No action shall be brought against executor until after the expiration of one year	182
Money of insolvent estate shall be paid into court by adm'r, &c. and order of distribution	"	Claims against the estate to be filed in the clerk's office within one year, and for failure shall be postponed	"
Liens to be paid first	"	Duty of administrator de bonis non	"
Distribution of solvent estate, how made after one year	187	Inventory of insolvent estates to be filed in clerk's office, heirs summoned, &c.	"
Widow, heirs, &c., may be summoned to answer as to distribution	"	Non resident heirs, how notified	183
Proof may be adduced as to the rights of parties claiming distribution	"	Real estate, decree to sell	"
Widow, heirs, &c. may file petition for shares to which adm'r shall answer	"	Additional bond required in case of decree to sell real estate	"
Heirs shall answer as to advances made them	"	Deed to purchaser	"
Distributors shall give bond to refund if necessary	188	Lien shall be provided for in decree	"
Decree on distribution final, if without fraud	"	Holder of lien shall be made a party	"
Absentee interested may open the settlement within five years	"	School commissioner's certificate may be assigned	184
Exception in favor of infants, persons non compos mentis, or out of the U. S.	"	Legal obligations may be sold by executor or administrator	"
Infant may prosecute in probate court by guardian	"	Administrator may sell real estate at private sale	"
Proceedings in favor of infants by guardian	"	Guardian, when and how appointed, and his bond, oath and powers	193
Proceedings vs. infants may be opened one year after age	"	Guardian, how he may sell real estate of minor	"
Executor shall qualify within one year	179	" authority, how revoked, & how he shall account to successor or minor	"
When executrix marries, husband shall give bond	"	" may be summoned to account	194
Rights shall cease on failure to give bond	"	" court shall order, how to dispose of estate, &c.	"
General powers of executors and administrators	"	Real estate may be sold for certain purposes	"
May sue for waste, injury or detention of property	180	Appraisers shall be appointed and guardian give bond for, &c.	"
May institute and maintain actions of account, trespass, &c.	"	Court shall appoint commissioners to effect such sale, who shall make report to court, &c.	195
Shall give notice as to solvency or insolvency of estate	"	Court may order real estate to be sold at private sale	"
Inventories, how and when made	"	Bond, suit may be brought on guardian's, for neglect, &c.	"
Notice of sale, how given	"	Court shall examine guardian's bond once in two years	"
		Revocation of appointment of guardian, adm'r, &c. for what causes, and when they shall give further	"

security	
Successor of guardian, executor or adm'r, how appointed, and his powers and duties	196
Guardian, adm'r, &c. may be removed on application of securities and shall account for omission of duty, &c.	"
Guardian, adm'r, &c., shall account to court	197
" " may give further security	"
" " shall loan money	"
Court may compel adm'r or guardian to account to his co-adm'r or guardian and on failure, his appointment to be revoked	"
Probate judge may practice law	198
Review in favor of infant	198
Estates without heirs, how disposed of	"
Estates of legatees out of U. S. to be paid into state treasurer	189
Discovered heir, &c. may reclaim his estate, and how	"
Proceedings vs. adm'r for not paying into the state treasury	"
Estates without heirs to be certified by clerk to auditor	"
Executor de son tort, his liability, and how sued	"
Mal-administrator, negligence, &c. shall be waste of estate, and suit for, may be sustained	"
On return of execution vs. adm'r scire facias may issue	190
Waste may be alleged in scire facias	"
If waste be proved, judgment de bonis propriis may be rendered, or suit may be brought on bond alleging waste	"
Mispleading or lack of pleading or judgment by default not to prejudice adm'r, &c.	"
On judgment quando, scire facias may issue alleging assets subsequently acquired	"
Creditors may jointly sue on bond of adm'r or exec'r alleging fraud, negligence, in settlement of estate, or file bill in equity, in probate or circuit court	191
Foreign letters, authentication of, and how suits may be sustained on	"
Bond shall be given by foreign guardians	"
Jurisdiction of estates lying out of the county, how probate court may have	191
Adm'r, &c. shall file copy of any notice in clerk's office	"
Affidavit to be filed with notice	192
Adm'r to be credited with insolvent notes	"
Probate court shall ex officio compel settlement of estates	"
Debtor appointed executor shall pay his own debts to the estate, and for failure to pay suits may be brought	"
If heir is absent adm'r may enter on real estate and shall account therefor	193
Power given by will to sell real estate	193
When probate judge is interested, circuit court shall have jurisdiction	"
Letters testamentary shall not be granted to minors	"
Adm'r may be appointed during minority of ex'r	"
When probate courts shall be held, and proviso	"
Form of letters testamentary	199
COURTS, SUPREME.	
Act organizing sup. court and defining its duties and powers	199
Sup. court to consist of three judges	"
" " shall be court of record	"
Oath of judges	"
Certificate of oath shall be endorsed on commission, and a similar one filed in the office of the clerk of sup. court, and in the office of the secretary of state	"
Sup. court when and where holden	200
do term of, may continue 30 days	"
do may adjourn to any other rooms	"
do clerk of, (see clerks)	"
do shall appoint its own cl'k, who shall take an oath and give bond	"
do shall annually inspect clerk's office	"
do shall appoint a sheriff, who shall give bond, attend court, and execute process	"
Fees of sheriff and postage	201
Sheriff of counties shall serve all process directed to them by the sup. court and their liabilities	"
Sheriff may return process to court by mail	"

Sup. court may appoint a sheriff pro tem. in certain cases	201
do shall have appellate juris.	"
do shall be adjourned when judges fail to attend	"
do executions from shall be similar to those issued by circuit court	202
do shall direct forms of other process and make rules	"
Writs of error and appeals shall extend to all judgments and decrees of inferior courts of record	"
Sup. court shall not have jurisdiction over judgments of inferior courts reversing or affirming justices' judgments, where supersedeas may be refused	"
Appeal when prayed for and appellant's bond	"
Transcript of record shall be transmitted by plaintiff in error in sixty days, and if not sent up in 60 days execution may issue	"
Appellee or defendant in error may demand trial at first term	"
No pleadings necessary except an assignment of errors	203
Writ of error shall not operate as supersedeas unless the court or a judge so order	"
Operation of supersedeas limited to four years	"
Upon expiration of that time, clerk of sup. court shall certify to cir. court that supersedeas has expired, and execution may thereupon issue	"
Second supersedeas after four years shall not be granted	"
Writ of error shall not operate as supersedeas until bond be given as in appeals	"
Writ shall be issued as a matter of right	"
Summons to be issued at the time of issuing writ of error	"
Notice of pendency, and when necessary	"
Plaintiff in error may assign errors on the transcript, &c.	204
Errors in law only shall be assigned except in case of wills	"
Damages on affirmance shall not exceed 10 per cent.	"
On reversal in whole or in part, court shall use discretionary power as to costs	"
In case of partial reversal court shall give judgment as inferior court should have done	"
Court may issue execution or remand the cause to inferior court	"
Court shall reverse to include the first error, and remand the cause with instructions, &c.	204
Party committing first error shall pay costs as the court may order	"
Judgment of affirmance upon writ of error made a supersedeas, shall carry damages as in appeal	205
Error shall not be brought after five years, excepting in favor of infants	"
Judgment on the merits shall neither be stayed nor reversed after verdict	"
If court be divided in opinion, cause shall be continued	"
Clerk of sup. court, his duty	"
Writs to be tested in the name of the clerk	"
Sup. court, powers of	"
Witnesses and jurors, how summoned	"
Court or a judge may grant commission to take depositions	206
Notice of taking shall be given	"
Parties may appear in court personally or by attorney	"
Seal of the court	"
Opinions of the court shall be in writing	"
Court may make allowance to sh'ff for services, fuel, and clerk for books, &c.	"
Gov. shall release prisoner when judgment is rendered	"
COLLEGE FUNDS.	
Loan office established	139
Treasurer's oath and bond	"
Funds	140
Treasurer's powers as superintendent	"
Title of mortgaged premises, how investigated	"
Duty of com'rs to value premises	"
Commissioners' compensation	"
Rate of interest	141
Form of mortgage	"
Cl'k shall certify as to incumbrance	"
Mortgage to be recorded	"
Moneys to be loaned for five years	"
Mode of enforcing payment	"
Treas'r to report name of borrowers	142
Treasurer may loan to state	"
Interest to be paid Indiana college	"
Compensation to treasurer	"
Deeds to be made	143
Sales when held	"
Interest to be loaned	"
Penalty for com'rs of reserves to make report	"
Penalty for failing to give bond	"
CONGRESS.	
Ordinance of, relative to N. W. ter.	23
Act of, to provide for government of N. W. territory	28

An act of, to divide N. W. territory	29		
An act to divide Indiana territory	30		
An act to enable the people of Indiana territory to form a state gov.	32		
An act of, relative to naturalizat'n	54		
CONSTABLES.			
How elected	144		
Term of office	—		
Inspectors to give certificate of elec.	—		
Constable's oath	"		
Constable's bond	"		
May be approved by the clerk	"		
Conditions of bond	"		
Bond of const. to be filed with clk	"		
Vacancies, how filled	145		
Special appointments	"		
Duty in suppressing riots, &c.	"		
May call posse comitatus	"		
Process, how endorsed	"		
Shall attend trial before J. P.	"		
Penalty for neglect, how assessed	"		
Further security when to be exacted	"		
Constables may be removed	146		
General powers of constables	"		
Proviso as to escapes and fugitives in other counties	"		
Constables' sales where and when to be made	"		
Constables may not purchase judgments, &c.	147		
Bonds for delivery of property, how taken	"		
Forfeited delivery bonds, how disposed of	"		
Remedy of obligee on bond, &c	"		
Damages on forfeited delivery bonds	"		
No replevy on judgments on delivery bonds	148		
Penalty for bidding and failing to pay at constable's sale	"		
Penalty for failing to return process	"		
Remedy by scire facias on constable's bond	"		
Proceedings on commitments	"		
Sheriff's powers granted constables	"		
Effect of justice's process	"		
Securities may have constables removed	149		
CONTESTED ELECTIONS.			
(See elections general, and elections township and county, laws in new counties.)			
How election shall be contested	250		
Who may contest	251		
For gov. how contested	"		
Gen. Assembly shall appoint joint committee to try validity of	"		
Contestor shall be a voter	"		
Contested elections of township and county officers how regulated and decided	259		
COLLECTORS OF TAXES.			
Shall receive county orders at par (See county business, also co. treas.)	154		
Shall ex officio prosecute for offences against the revenue; (see co. business, also co. treasurer)	161		
COMMISSIONS.			
To take depositions may be issued by circuit court	162		
COMMITMENT.			
Copy of, shall be left with the jailor by constable	148		
COMMON LAW.			
Of England, declared in force	398		
CONCEALED WEAPONS.			
Carrying, (see crime and punishm't)	217		
CONCEALING FUGITIVES FROM LABOR.			
See act of Congress	332		
CONSIDERATION.			
(See frauds and perjuries.)			
Failure of, how pleaded	451		
CONGRESSIONAL TOWNSHIPS.			
Incorporation of, for school purposes (See schools, congressional.)	509		
CONTEMPT.			
Attorneys, how punished for, (see attorneys)	84		
(See also courts, circuit)	163		
J. P. may fine and imprison for	379		
CONTRACTS.			
Of apprentices, void	68		
Upon consideration of marriage, void unless in writing	311		
Gaming contracts void	324		
Of insane persons void	333		
CORNERS OF LAND.			
How perpetuated	577		
COUNTERFEITING.			
Crime and punishment	208		
Retaining apparatus for	209		
COUNTY.			
A privileged creditor of insolvent to the amount of the costs of imprisonment	362		
COUNTY AGENT.			
How appointed, and his duties	506		

COUNTY BOARDS.	
May remove constables for cause, (see constables)	146
May remove county treasurer	159

COUNTY CLERKS.	
(See clerks.)	

COUNTY COMMISSIONER.	
(See county business.)	

COUNTY LIBRARIES.	
(See libraries, county.)	

COUNTY OFFICERS.	
How elected	257

COUNTY ORDERS.	
May be divided, (see co. business)	153

COUNTY ROADS.	
(See roads and highways.)	

COUNTY SEATS.	
How established in new counties, (see seats of justice)	506

COUNTY SEMINARIES.	
(See seminaries, county.)	

COUNTY SURVEYORS.	
Shall be appointed by co. board	576

COUNTY TREASURER.	
County treasurer how appointed	158
Treasurer's bond	"
Shall receive and disburse moneys, keep accounts, make report to co. board, and make annual settlem't	159
Shall prosecute delinquent collector of revenue and jury fees	"
Shall pay county orders according to precedence	"
Shall receive county orders from collector without regard to precedence	"
Treasurer's per centum	"
May be removed from office by county board	"
License to vender of merchandise, how granted	160
Clerk to issue license to vend merchandise	"
Form of license	"
How granted in vacation	"
Treasurer shall receipt for money paid to obtain license	"
Tax on exhibitions, shows, &c. how levied by treasurer	"
Clerk's fee for certificate	"
Tax on such shows may be added by trustees of towns	"

Sheriffs, collectors, constables, &c. shall prosecute for violations of this act	161
--	-----

COUNTY BUSINESS.	
Seminary, land for, to be conveyed to county	157
Seminaries, records relative to, how kept	"
Com'r may select students for Indiana college	"
Three per cent. fund, board may appoint com'r to expend	"
Taxation, board may exempt persons from	"
Oaths, board may administer	"
Order, board have power to enforce	158
Allowances, how made	"
Horse thieves, com'rs to make allowance for the apprehension of	"

CRIME AND PUNISHMENT.	
Treason	207
Murder	"
Manslaughter	"
Burglary	"
Robbery	"
Grand larceny	"
Petit larceny	208
Second offence punishable as grand larceny	"
Receiving, buying, or concealing stolen goods	"
Compounding a felony	"
Bonds, notes &c. considered goods	"
Forging and counterfeiting	"
Retaining counterfeiting apparatus	209
Rape, and proof of	"
Kidnapping	"
Malicious mayhem	"
Arson	210
Bigamy	"
Bribery	"
Escape, negligent	"
" voluntary	"
" effecting	"
Obtaining goods by false pretences	211
Altering brands, marks, &c.	"
Giving, accepting, or carrying challenge	"
Fighting a duel	"
Killing in a duel, declared murder	"
Perjury	"
" subornation of	"
" in making voluntary affidavits	212
" requisites in indictment for	"
Assault with intent to ravish, murder &c.	"
Assault and battery	"
Affray	"
Unlawful assemblage	"
Rout	"
Riot	213
Simple mayhem	"

Obstructing legal process	213	Sheriff conveying convict, may call aid	"
Malicious trespass	"	Penalty for refusing aid	"
Simple trespass	"	Female convict to be sent to county jail	"
Forcible entry and detainer	214	Recognizances, amount of to be ordered by court	"
Disinterring corpses	"	Recognizances not void for want of form	"
Encouraging escape of slave &c.	"	Attachment, amount of bail on, to be ordered and endorsed by clerk	"
Nuisance	"	Sureties may surrender principal, & how	222
Spurious money	"	Jurors in criminal cases, may be examined on oath, touching their opinion of defendant's guilt or innocence	216
Saving in favor of banks &c.	"	This act to be given in charge to grand jurors	"
Unwholesome provisions	"	Clerk neglecting to keep his record in clerk's office	"
Obstructing navigation	215	Injured party, a competent witness	"
Negligence and extortion of ferrymen	"	Evidence as to bank notes	"
Influencing jury	"	Stolen property to be restored, and suit therefor	"
Malicious prosecution	"	Firing woods or prairies	"
Barratry	"	Assaulting peace-maker	223
Usurpation	"	Bringing paupers into this state	"
Official negligence	"	Ardent spirits, prohibition and penalty for selling	"
Extortion	216	Lotteries, penalty for selling tickets	"
Negligence of clerks	"	Administering poison	224
of seminary trustee	"	Poison, mingling with food	"
Failing to give assessor a list of taxable	"	Medicine administered to a pregnant woman to produce miscarriage	"
Offences against revenue	"	State prison, convict escaping from shall serve double term	"
Exhibiting shows without license	"	State prison, further provision in relation to escape from	"
Vending merchandize without license	217	Repeal of 89th section	"
Vending spirits without license	"	Aiding a prisoner to escape from jail	225
Failing to put up a list of tavern rates	"	Land marks, removing, defacing or altering	"
Carrying concealed weapons	"	Fraudulent sales	"
Adultery	"	Repeal of 40th section	"
Lewdness	"	Former acts govern prosecutions &c. under this	"
Gaming and betting	"	Governor may commute capital punishment in certain cases, into imprisonment	226
Losing or winning money	"	In cases of riot, court or jury may or may not imprison at discretion	"
Deceit in gaming	"	Repeal of 13th and 17th sections of this act	"
Keeping gaming tables	218	Selling forged bank notes, how punished	"
Tavern keepers suffering gaming	"	Malicious trespass on U. S. lands	"
Disturbing religious societies &c.	"		
Keeping unenclosed saltpetre caves	"		
Assault	"		
Infringement of ferry rights	"		
Vending cards and obscene books	"		
Breach of Sabbath	219		
Selling spirits on the Sabbath	"		
" " to minors	"		
Profane swearing	"		
Playing bullets &c. on roads or in town	"		
Abetting crimes	"		
Punishment by hanging	"		
Justices' jurisdiction in petty offences	"		
In prosecutions by presentment or indictment, jury shall assess fine, except on plea of guilty	"		
What crimes deemed infamous	220		
Pardon shall not restore franchises	"		
Cost upon conviction	"		
Challenges to jury allowed	"		
Culprit standing mute, how tried	"		
Limitation of prosecution	"		
Limitation	"		
Fines how replevied, and effect of	"		
Defendant shall remain in custody until fines are replevied	221		
Penitentiary sentence, how certified to keeper	221		

D

DEBTORS, INSOLVENT.

Insolvent debtors may file petition in circuit court for discharge	227
Shall make out schedule of estate, real and personal	"

Shall deliver into court all moneys, notes, &c.	227	Surety having paid the debt, may have judgment on motion, against the principal	235
Schedule shall be sworn to	"	Proceedings where there are 2 or more sureties, and principal insolvent	"
Order of publication, notice & proof of publication &c.	228	Surety may not confess judgment to the prejudice of his principal &c.	"
Trustee, how appointed, and his bond	"	Remedy in favor of special bail	"
Insolvent's oath, form of, to be attested and filed	"	Ten days notice of motion to be given	"
Effect of schedule and oath	229	Act concerning public defaulters	236
Powers and duties of trustee	"	Treasurer and auditor shall report defalcations	"
Trustee may bring suit	"		
Avails of suits shall be assets for payment of debts	"		
Dividend, how made	"		
Trustee to give notice of time when he will adjust claims	230		
Creditor failing to exhibit claim, not entitled to share	"		
Trustee shall make distribution every six months, and report final settlement to c. court	"		
Creditor may except to trustee's report	"		
Insolvent shall at the time of filing his petition, give bond to assign his property; and for want of bond, petition to be dismissed	"		
Effect of insolvent's discharge	"		
When discharge shall be inoperative	231		
Discharge, how set aside for fraud	"		
Insolvent, how discharged from arrest	"		
Sheriff sued for escape, may plead this act	"		
Prisoner unable to support himself in jail, how discharged	"		
Insolvent may be interrogated, and fraud established on final hearing	232		
Insolvent in jail under justice's execution, how discharged; notice to party and prisoner's oath	232		
Affidavit, where lodged	"		
Prisoner to be discharged and trustee appointed	233		
Insolvent shall answer questions under oath, and if guilty of fraud or perjury, shall not be discharged	"		
Capias shall not issue against a female in civil cases	"		
DEBTORS AND THEIR SECURITIES.			
Security, fearing the insolvency of his principal, may notify creditor to bring suit, and for failure, security shall be discharged	"		
Security may compel principal to answer joint declaration	234		
Issue and trial	"		
Court may order levy to be first made on goods &c. of principal	"		
Order to be endorsed on execution	"		
Proceedings shall not be postponed	235		
Provisions of this act shall extend to heir, administrator, &c. of deceased security	"		
		DECLARATION.	
		(See practice at law.)	
		DECLARATION OF INDEPENDENCE.	3
		DEDIMUS POTESTATEM.	
		May be issued by c. court (see circuit court)	162
		How issued by J. P.	369
		May be issued without affidavit	453
		DEEDS.	
		May be recorded by clerk of supreme court	136
		Shall be recorded within 12 months	312
		How proved	"
		Husband and wife to join in conveying wife's interest in lands	313
		How acknowledged	"
		Of lands lying in other counties, how authenticated	"
		Foreign deeds, how authenticated	314
		Duty of recorder in recording	468
		How given by school commissioner	520, 521
		Shall be recorded	526
		DELIVERY BONDS.	
		Taken by constable (see constable)	147
		A plaintiff shall not be compelled to sue on, but may proceed on the original judgment	"
		Damages on	"
		No replevy on, and no appeal but on affidavit	148
		Taken by sheriff under execution from circuit court	279
		Second delivery bond prohibited, & no stay of execution	280
		Shall be entered on judgment docket in circuit court	284
		DEPOSITIONS.	
		In circuit court	162
		In supreme court	206
		In probate court	175
		Before J. P.	368
		In chancery	440
		When to be filed	443
		Objections when to be taken	444

- Taken by a J. P. in this state, how authenticated 452
 Taken by a J. P. in another state, how authenticated "
 Deps. de bene esse, when taken 272
 Reasonable notice of time and place of taking, shall be given "
 Deposition shall be filed "
 Clerk may issue commission to take 273
 When deposition of judges, attorneys &c. shall be taken 275
 Objections to deposition, how made "
DESCENT, DISTRIBUTION, AND DOWER.
 How estate shall descend 236
 Widow's dower saved "
 For want of children or their descendants, how estate shall descend "
 Widow's portion 237
 Children by a previous marriage shall inherit "
 How estates derived from paternal line shall descend "
 How estates derived from maternal line shall descend "
 Estates when to descend to paternal or to maternal heir, and saving to widow the whole of the personal and half the real estate "
 When estate shall go to wife, and when to support of free schools 238
 Property advanced to heirs shall be taken into view "
 Legitimate and illegitimate children shall inherit mother's property alike "
 Illegitimate child acknowledged by father, shall be deemed legitimate "
 Widow entitled to one-third of husband's personal estate, after debts are paid, and \$100 absolutely "
 Widow shall give bond to refund "
 Estates tail, how disposed of "
 Widow's dower "
 Feme covert dying intestate, estate disposed of 239
 Widow may continue in mansion house until dower is assigned "
 Heir neglecting to assign dower, et. may appoint commissioners for that purpose "
 Commissioners shall be sworn, make return to court; the effect of such assignment "
 When heir may have widow's dower assigned 240
 When an estate cannot be divided, widow's dower shall be of the one-third of the rents and profits "
 Widow entitled to damages for refusal to assign dower, "
 Widow liable to damages for waste on dower estate "
 Tenants in dower shall keep house &c. in repair 240
 For what causes wife shall be barred of her dower, and husband of his tenancy by courtesy "
 Compensation to commissioners under this act "
DEVISEES.
 Real estate of, not subject to execution unless summoned 284
 (See courts probate, wills)
DISINTERRING CORPSE.
 See crime and punishment 213
DISTRIBUTION.
 (See descents, distribution & dower)
DISSEIZIN.
 Action of, to recover possession of lands 241
 How plaintiff may declare "
 Defendant may plead general issue "
 Extent of remedy herein provided "
 Who may join as plaintiffs and defendants "
 Process when issued, action where brought; limitation, saving &c. 242
DISTRESS INFINITE.
 Probate court may resort to, to enforce judgment 196
DISTRESS FOR RENT.
 (See rent and distress)
DISTURBING RELIGIOUS SOCIETIES.
 (See crime and punishment)
DIVISION OF LANDS.
 (See partition)
DIVORCE.
 May be granted by circuit court, and for what causes 242
 Shall not be granted in absence of president judge 243
 Persons having a residence in the state two years may file libel "
 Summons and copy of libel, how served "
 Notice to non-resident defendant to be published three weeks, sixty days before court "
 Defendant may deny the allegation of the libel without oath "
 No decree but upon oath "
 How decreed "
 Temporary orders as to estates &c. "
 Husband shall answer on oath as to wife's estate 244

- Judges may make temporary order in vacation "
 When divorce is decreed, court shall make division of estate "
 Wife shall not be barred from dower, except in case of adultery &c. "
 Prosecuting attorneys shall oppose the granting of divorces "
 Court shall consider the age and sex of children "
DOMESTIC ATTACHMENT.
 (See attachment, domestic)
DOWER.
 (See descents, distribution & dower)
DUEL.
 (See crime and punishment)
E
EJECTMENT.
 Tenant concealing declaration in ejectment, to forfeit two year's rent 260
 Landlord, how admitted to defend in ejectment "
 Limitation of action of ejectment "
 Saving in favor of feme covert, minor &c. "
 Occupying claimant shall be paid for valuable improvement by him who recovers in ejectment 261
 Improvements how valued "
 Aggrieved party may appeal to supreme court "
 Successful claimant may pay for improvements, or demand the value of land without improvements; and if occupying claimant fails to pay, he shall be evicted 261, 262
 When occupying claimant may continue in possession 262
 Formal objection to declaration in, shall not be taken after issue 452
ELECTIONS.
 Act regulating elections 244
 Poll books to be given to inspectors "
 Judges and clerks of election, how appointed, and their oaths and duties 245
 Inspector failing to attend, voters may appoint one "
 At what hour election shall be opened and closed "
 Penalty for voting in different districts "
 How tickets shall be received and disposed of, and what the ticket shall contain "
 Voters may be sworn as to their right to vote 246
 No person shall vote out of the c'ty of which he is an inhabitant "
 Ballot boxes, county board shall furnish "
 How votes shall be counted "
 How ballot box shall be kept during adjournment of inspector & judges 247
 How tally shall be kept "
 Deceitful votes shall be rejected "
 Certificate, how made and returned
 Certificate of votes for governor and lieutenant governor, shall be sent to speaker H. R., and of members of congress to secretary of state "
 Secretary of state shall publish returns 248
 Secretary of state shall certify to governor the votes for members of congress, and governor shall give certificate of election "
 Election, how decided when two or more have the same number of votes "
 Clerk may be fined for neglect &c. "
 Secretary of state shall certify neglect of clerk to prosecuting attorney "
 Clerk shall certify to secretary of state, the returns of each annual election for certain officers 249
 List of votes, tally papers &c. to be preserved "
 Vacancy of representative to congress, or senator or representative in the general assembly, how filled "
 Mode of conducting elections where two or more counties form a senatorial or representative district "
 Penalty for attempting to restrain freedom of election "
 Penalty on officers neglecting their duty in reference to elections 250
 Compensation to inspector, judges, and clerks "
 When an additional poll may be opened "
 How election shall be contested "
 Who may contest 251
 Election for governor, how contested "

General assembly shall appoint a joint committee to try the validity of contested election and the powers of the committee, the evidence	251,2	out and transmit return to secretary of state	257
Contestor shall be a voter	252	Vacancy for clerk, how filled	—
		“ for recorder, how filled	—
ELECTION, PRESIDENTIAL.		Every county shall be divided into townships	258
Act regulating the presidential election	252	Election for J. P.	—
When elections will be held, the ratio, and how conducted	—	How, when and to whom return shall be made	—
Sheriff shall give notice of the time of holding the election	—	J. P. may be elected for incorporated town	—
Certificates of election to be given by judges	253	“ removing out of the town, vacates his office	—
Certificates shall be delivered to the marshal, who shall deliver them to secretary of state	—	Contested elections, how regulated and how decided	259
Secretary of state shall open and proclaim the votes in the presence of the governor, &c.	—	ELECTION, U. S. SENATOR.	
Governor shall transmit certificates of election to electors, and publish, &c.	—	Election of United States' senator shall be viva voce	—
In case of tie, lot shall be drawn	254	ELIZORS.	
When and where electors shall meet	—	When and how appointed	453
Electors shall meet the governor &c., and in case of absence of any elector, electors present shall fill vacancy	—	ENCLOSURES AND TRESPASSING ANIMALS.	
In case of tie in filling vacancy, lot shall be drawn	—	Act concerning	262
Notice, how given to elector elected to fill vacancy	—	What shall be a lawful fence	—
Return districts	—	Partition fence, by whom to be made and how maintained	263
Governor shall appoint a marshal for each district	—	Duties of fence viewers	—
Oath and duties of marshal	255	When fence viewers adjudge partition fence to be insufficient, they shall notify owners	—
Compensation to judges and clerks of election and fees of marshal	—	Order to repair partition fences may be enforced by justices	—
Election of electors in case of vacancy in office of president or vice president of the U. S.	—	Expenses, &c. to be levied on delinquent's goods	—
Compensation to sheriff	—	Other modes of fencing	—
“ to electors	256	Trespassing animals may be distrained, and notice thereof how given	264
Penalty against judges, clerks and marshal for neglect of duty	—	Owner may tender damages and reclaim animals	—
Marshal may appoint deputy, and vacancy in office, how filled	—	Damages, how ascertained, and justice's judgment on assessment for damages	—
ELECTIONS, COUNTY AND TOWNSHIP.		Liability for killing or hurting animals	265
Act for electing officers	257	If owner of animal does not appear, notice of distress shall be given in a newspaper	—
Vacancy for associate judge, how filled	—	Value of animal, and value of damages and expenses of keeping, how ascertained	—
Certificate of election	—	Distrainer liable to owner for valuation for five years, and if not then demanded, shall pay the amount into county treasury	—
When there is no sheriff nor clerk, inspector or judges shall make	—	Penalty for violating this act, and	—

how recovered	265	first day of each c. court.	267
Penalty for retaining animals without giving notice	266	Reward for taking up, unless the estray be worked	—
ENCOURAGING ESCAPE OF SLAVES.		Unclaimed horses, mules and asses, how disposed of	268
See crime and punishment	215	Unclaimed cattle, sheep, hogs, &c., how disposed of	—
ENTRY AND DETAINER.		When cattle &c. shall vest in taker up	—
See forcible entry and detainer	307	Unclaimed water craft, how disposed of	269
EQUITY, JURISDICTION.		When water craft shall vest in taker up	—
See courts circuit; practice in chancery	—	No report need be made to clerk when the appraised value does not exceed \$2 00	—
ERROR.		Owner claiming property taken up may go before J. P. and prove his property, and proceedings thereon	—
Writs of, in supreme court shall extend to all judgments &c. (see courts supreme)	202	Remedy of claimant vs. taker up who refuses to restore property and judgment by J. P.	270
Assignment of, in sup. court	203	Proceedings when estray is restored or lost	—
Writ of, shall not operate as a superseas unless the court or a judge order (see sup. court)	203	Who may take up estrays, & where and when cattle &c. shall not be taken up	—
“ limited to four years	—	Estrays shall not be removed from the county	—
“ shall not operate as a superseas until bond be given as in appeals.	—	All estrays, &c. taken up at one time shall be included in one advertisement	271
(See courts supreme)	—	Penalty for neglect or abuse of estrays	—
ESCAPE.		EVIDENCE.	
Negligent, (see crime & pun't)	210	Act relative to	272
Voluntary “ “	—	Depositions de bene esse, when taken	—
Effecting, “ “	—	Notice of time and place of taking shall be given	—
Of slaves, encouraging “	214	Depositions to be filed	—
ESTATES.		When clerk may issue commissions to take depositions	273
Real and personal, subject to execution	278	Statute books of this state and late territory of Indiana and Illinois shall be taken as evidence	—
Created by parol, estates at will	311	Statute books of other states shall be taken as evidence	—
Per autre vie, devisable	315	Copies of any statute of other states taken by the secretary of state of this state, with a certificate of their correctness and the seal of state attached thereto, shall be evidence	—
ESTATES, TAIL.		When the records of a J. P. of other states shall be evidence	—
How disposed of	238		
ESTRAYS, AND WATER CRAFT ADRIFT.			
Act regulating	266		
Taker up of water craft to advertise in five days, and have the same appraised in ten days after notice	—		
Taker up of neat cattle, &c. shall proceed in same manner	—		
Fees of J. P. clerk and printer	267		
Clerks shall set up description of estrays at court house door and estrays to be taken to pound the	—		

- J. P. may certify judgment of their predecessors 274
 When the records of a J. P. of this state shall be evidence —
 Notary public, evidence of —
 Certificate of sec. of state as to time of depositing laws in several courts, shall be evidence —
 When the certificate of other officers shall be evidence —
 When depositions of judges, attorneys, &c. shall be taken 275
 Objections to depositions, how made —
 Competency of witness —
 Witness shall take oath or affirmation —
 General moral character of witness may be given as evidence —
 When acts of other states shall be evidence 276
 When records of courts of other states shall be evidence —
 Board of int. imp. records of, how authenticated —
- EXECUTION.**
- Real and personal estate subject to 276
 Wearing apparel excepted 277
 Execution, how levied —
 Defendant may direct on what part to levy —
 Personal estate to be taken first —
 Property shall sell for the best price, &c. —
 Rents and profits of real estate for seven years to be first exposed —
 Seven years term, how conveyed —
 Conveyance in fee simple —
 What property shall be exempt from execution —
 Revolutionary soldiers exempt from imprisonment for debt 278
 Notice of sale of real estate, how given —
 “ “ of personal estate, how given —
 Execution unsatisfied to be returned —
 Alias execution and its endorsement —
 Venditioni exponas, when to issue —
 Successor of sheriff shall convey land sold by predecessor —
 Estate of a principal shall be first sold 279
 Execution may issue to any county, and officer may return it by mail —
 Execution defendant may give delivery bond —
 Suit on forfeited delivery bond and judgment 279
 Second delivery bond prohibited 280
 Execution may be stayed by defendant giving security and effect thereof “
 Execution on judgment not replevied shall be so endorsed, and sheriff may take replevy “
 Replevy bond shall be returned to clerk's office and effect thereof “
 Judgments against certain officers not repleviable 281
 Ca. sa., when to issue “
 “ “ issued to foreign county, how executed “
 “ “ how prisoner under may be discharged “
 Creditor shall be notified of debtor's intention to take insolvent's oath 282
 Creditor may interrogate prisoner whose answers shall be in writing “
 Death of a prisoner shall not be a satisfaction of the judgment 283
 Remedy, prisoner dies in execution “
 Debtor shall not delay in selecting property to be sold on execution “
 State shall have preference of other creditors “
 Property given up on ca. sa., how sold “
 Replevy bonds, &c., shall be entered on judgment docket, and shall not operate as a satisfaction of the original judgment 284
 Real estate of decedent not subject to execution unless heirs, &c. are summoned “
 Proceedings on judgment vs. executor, &c. to have execution of real estate of decedent “
 Heirs of non-age shall not suspend execution “
 Mortgage, foreclosure of, by bill in circuit court “
 Decree of foreclosure, sale and conveyance 285
 Effect of foreclosure, and notice of mortgage sale “
 Overplus of sales to be paid to execution defendant “
 What estate is conveyed by sale of mortgaged premises “
 Reversal of judgment shall not avoid sales made bona fide 286
 Proceedings vs. sheriff &c. for failing to return execution “
 Return days of execution “
 Purchasers of property under exe-

- cution refusing to pay the purchase money, shall be liable to judgment, &c. 286
 Additional articles exempt from execution “
 Stay of execution in domestic attachment 76
 No stay of execution on judgment against bank, &c. 95
- EXECUTORS.**
- See courts probate
 Refusing to qualify, administration may be given to widow 177
 Shall be qualified in open court and give bond “
 General powers of executor 179
 Executor bound for value of sales 181
 May be removed 196
- EXHIBITIONS.**
- Tax on; (see county treasurer) 160
 Incorporated towns may assess an additional tax “
 Exhibiting shows without license, (crime and punishment) 216
- EXONORETUR.**
- Shall be entered on bail piece in court, on surrender of the principal 454
- EXTORTION.**
- Of ferrymen, (see crime and punishment) 215
 “ officers 216-297
- F**
- FAILURE OF CONSIDERATION.**
- How pleaded 451
- FALSE PRETENCES.**
- Obtaining goods by, (see crime and punishment) 211
- FALSE AFFIDAVIT.**
- See crime and punishment 212
- FEE BILLS.**
- Shall be issued with execution, (see clerk) 135
 May be issued by recorder & county surveyor 297
 “ “ by clerks of supreme, circuit, and probate courts, and by J. P. 298
 See fees and salaries
- FEES AND SALARIES.**
- Act regulating 287
 Fees of clerk of supreme court 288, 301
 “ of cl'k of c. c. in civil cases “ 309
 “ of cl'k of c. c. in criminal cases 290
 “ of clerk of probate court 291
 “ of sheriff “
 Fees of jurors 293
 “ of witness sup. and c. court “
 “ of witness before a J. P. “
 “ of prosecuting attorneys “
 “ of coroner “
 “ of recorder 294-534
 “ of secretary of state “
 “ of attorneys in circuit c. “
 “ of attorneys and counsellors in supreme court “
 “ of surveyor “
 “ of justice of the peace 295
 “ of constable in civil cases 296
 “ of constable in criminal cases 297
 “ of secretary and clerks of the general assembly “
 “ of door-keeper of general ass. “
 List of clerk's to be kept up “
 Extortion of officers in collecting fees “
 Recorder and surveyor may issue fee bills “
 Clerks of supreme, circuit and probate courts, and J. P. may issue fee bills 298
 Fees of witnesses, when to be claimed “
 How fee bill shall be served “
 Sheriff's and coroner's fees to be endorsed on process “
 Clerk shall keep fee books “
 Fee bill may be issued from fee book of predecessor “
 Fees standing three years, how collected “
 Suits on fee bills prohibited “
 Surety for costs liable as principal 299
 Remedy vs. officer failing to collect or return fee bills “
 Representatives of deceased sheriff liable for fee bills received to be collected “
 Second fee bill shall not issue unless the first has been returned not satisfied, &c. “
 Clerk of the supreme court shall not charge for a copy of a record unless one is requested “
 Sheriff &c. sued under this act may plead general issue “
 Items in a fee bill, how contested “
 Court may allow for official services

where no fee is fixed, and report to general assembly	299	Notice of such application, how given	304
Fees are due when services are rendered	"	County boards shall order kind of boats and number of hands	"
Fees of school commissioner	533	Bond of ferry keeper, and remedy for a breach of condition	"
" of township clerk	534	Express &c. shall pass free	"
" of township trustees	"	Sufficient boats and hands shall be kept, and hours of attendance	"
" of district trustees	535	Banks of rivers and creeks to be improved	"
" of clerk of supreme court in criminal cases	300	Tax to be paid for ferry privilege, unless exempted by county board	305
Fees how collected	"	Ferry keepers exempt from militia duty &c.	"
Fees and costs in criminal cases, act concerning	"	Penalty for invading ferry privilege	"
Compensation to associate judges	301	Rates of ferriage	"
Fees allowed to jurors of inquisition	"	For what cause, and how ferry may be discontinued	"
Governor, salary of	302	Appeal to circuit court	306
Judges of supreme court, salary of	"	Penalty on ferry keeper for neglecting duty	"
" of circuit court, salary of	"	Penalty on non-residents for invading ferry privilege on the Ohio or Wabash	"
Members of the general assembly, pay of	"	Non-resident land holder entitled to privileges of this act	"
		Penalty for obstructing ferry landing	"
FEIGNED ISSUES.			
Abolished; (see practice in chancery)	442	FERRYMEN.	
		Negligence or extortion of	215, 306
FEMALE CONVICTS.			
Shall be imprisoned in county jail	221	FIELD NOTES OF SURVEYS.	
		Of U. S. lands shall be procured by county surveyors and filed in the recorder's office	577
FEME SOLE.			
Marriage of, after action, shall not abate suit	455	FIERI FACIAS.	
		Shall not be issued on justice's transcript until scire facias &c. (see clerks)	135
FENCES.			
What shall be deemed lawful	262	Shall bind personal property from time of its delivery to the officer, but the first levy shall have precedence	318
FENCE VIEWERS.			
How and when elected, (see county business)	154	FINGER BOARDS.	
Duties of, (see enclosures and trespassing animals)		(See roads and highways)	498
FERRIES.			
Act to regulate	302	FLOUR.	
County boards shall establish ferries	"	Inspection of, (see inspection)	335
Not to be nearer each other than one mile	"	FIRE COMPANIES.	
How established on water courses dividing counties	303	May be formed under certain restrictions	307
May be granted to others where person entitled fails to apply	"	Incorporated towns may form	"
Notice of application, how given	"		
Quantity of ground occupied, and terms upon which owner of ground may get ferry which had been granted to another	"		
How granted, where land adjoining is a town common, and proviso &c.	"		

FIRING WOODS & PRAIRIES.		Husband and wife must join in conveying her interest in real estate, and wife must be separately examined &c.	313
(See crime and punishment)	222	Deeds made in another county, how authenticated, to be admitted to record in the county where the estate lies	"
FORCIBLE ENTRY & DETAINER.		Deeds made in another state, how authenticated	"
Two justices of the peace may try	307	Satisfaction of mortgage, how entered	314
Complaint and warrant	308	Devises to be in writing, attested by two witnesses	"
Form of venire for jury	"	Revocation of devise to be in writing	"
" of summons for defendant	309	Wills and codicils, how proved	"
Summons, how served	"	Wills executed out of the state, how authenticated, and effect of	"
Foreman's oath, juror's oath, and form of verdict	"	Proved wills &c. when recorded, shall operate as conveyances	315
Judgment, writ of restitution and form thereof	310	Wills void, unless recorded in 3 years	"
Appeal to circuit court	"	Legacy to a subscribing witness, void	"
Three years' possession shall bar remedy	311	Nuncupative will, how proved, and its effect	"
Crime and punishment	213	Estates <i>per autre vie</i> , devisable, & shall be assets	"
		Alteration of devise of goods, must be in writing	"
FOREIGN ATTACHMENT.			
(See attachment foreign)	81	Subsequent birth of a child shall revoke a will	316
		Sale of goods over \$30, void, unless by delivery or part payment	"
FORECLOSURE.			
Of mortgage	481, 284	Judgments in supreme and circuit courts, shall bind real estate from rendition	"
		Transcripts of judgments may be sent to other counties to bind real estate	"
FOREIGNERS.			
Naturalization of	54	Transcripts to bind real estate, to be recorded, and the effect thereof	"
May purchase real estate	67	Limitation of lien by judgment prior to 1826	"
		Limitation of lien by judgment since 1826, unless reversed or stayed	317
FORGERY.			
(See crime and punishment)	208	Clerk shall docket judgments alphabetically, and penalty for neglect	"
		Trust estate, liable to execution	"
FORMS.			
Of writs, judgments &c. for J. P.	389	" " on death of <i>cestu que trust</i> assets	"
		Heir shall not be chargeable personally	"
FRAUDS AND PERJURIES.			
Act to prevent	311	But execution shall be done of the whole estate	318
Estates created by parol and without writing, estates at will only, leases not exceeding three years excepted	"	Fi. fa. shall bind goods from the time of its delivery to officer, who shall endorse the time	"
Assignment of leases &c. to be in writing	"		
Creation of trusts to be in writing	312		
Trusts by implication or construction of law, excepted	"		
Assignment of trusts to be in writing	"		
Mortgages of land not recorded in 90 days, shall be adjudged fraudulent as to subsequent mortgages &c.	"		
Conveyance of land not recorded in twelve months, adjudged fraudulent, unless first conveyance be first acknowledged and recorded	"		
Deeds &c. how proved when grantor and witnesses are dead	"		

First levy shall have preference	318	Fugitives from labor, how reclaimed by master	323
Foreign wills &c. shall be admitted to record in this state, and their effect	"	Penalty for obstructing arrest, rescuing or concealing fugitives from labor	"
FRAUDULENT CONVEYANCES. (See crime and punishment)	225		
FREEDOM OF ELECTION. Penalty for attempting to restrain	249	G	
FUGITIVES FROM JUSTICE. Escaping from constable, how retaken by constable (see constable)	146	GAMING.	
Fleeing into this state, how proceeded against	319	Act to prevent	324
Fleeing from one county to another, how retaken, and proceedings thereon	"	Gaming contracts void	"
Warrant issued in the county, and endorsed by J. P. where fugitive is found, shall authorize his removal	"	How and when money won at gaming may be recovered back	"
Judges or justices of the peace may cause fugitives to be arrested and examined	320	Winner shall answer on oath, and on repayment, shall be exempt from further penalties	325
Where there is no sufficient prison, a prisoner may be sent to the nearest sufficient prison	"	Penalty for keeping gaming house	"
FUGITIVES FROM LABOR. Act in relation to	321	Persons returnable shall give evidence	"
How reclaimed by master, and his oath	"	Crime and punishment	217
Clerk shall issue warrant, which being served, judge or j. p. may commit or let to bail in 60 days	"	GAMBLING, PROFESSIONAL.	
Judge or j. p. may determine in a summary way, and grant warrant of removal	"	Act to suppress	325
Appeal from order of removal	"	Punishment for keeping and exhibiting gaming tables	"
On appeal, sheriff shall notify associate judges to attend at court house in five days, to try claim of service	322	This act shall be given in charge to grand jurors	326
Trial by jury	"	Duties of j. p. sheriffs and other officers	"
Continuance may be granted, and cause certified to circuit court	"	Persons concerned may be compelled to give evidence	"
FUGITIVES FROM LABOR AND JUSTICE.		Witness refusing to testify, shall be deemed guilty of contempt	"
Act of congress respecting	"	GARNISHEE.	
Fugitive from justice may be demanded by the executive of the state whence he fled	"	How summoned, and liability of, in domestic attachment	74
Agent to transport him	323	How summoned in foreign attach't	81
Penalty for rescuing	"	GENERAL ELECTIONS. (See elections general)	
		GOVERNOR.	
		May appoint probate judge	172
		Election of governor, how certified and transmitted	247
		Election of governor, how decided when two or more have same number of votes	248
		Governor shall give members of congress a certificate of election	"
		Governor, election of, how contested	251
		Governor shall meet electors of president and vice president	254
		Governor shall issue writs of election to fill vacancies &c.	"
		" shall ap. marshal for each dist.	"

Governor shall commission j. p.	258	Penalty on judge or other officer, for refusing to act	323
" salary of,	302	Writ may be issued on Sunday	"
Governor shall appoint sheriff in new counties, and issue writs of election	398	HANGING.	
Governor shall appoint and commission notaries public	420	Punishment by	219
Governor shall farm out state prison	572	HEIRS.	
Governor shall appoint visitor to "	574	Property of, may be attached	80
GRAND JURORS.		How they shall inherit, (see descents, distribution and dower)	236
How selected	358	Real estate of, not subject to execution unless summoned	284
GRIST MILLS. (See mills and millers)	415	Non-age of, shall not suspend execution	"
GUARDIANS. (See probate court)		Shall not be chargeable personally, by reason of any plea, or confession of action	317
Infant may prosecute in probate ct. by guardian	188	How summoned or notified in chancery	442
Proceedings by guardian in favor of infant, shall be final	"	HORSES AND CATTLE.	
Guardian, when to be appointed, his bond, oath, and powers as to selling property	193	Act to improve the breed of	329
Guardian, authority of, how revoked	193, 196	Stud horses over eighteen months old, running at large, may be taken up and gelded	"
Guardian may be sued	193	Covering horse running at large, how taken up and disposed of	"
Guardian may be summoned to account	194	Rams running at large between the 25th of August and 1st of Dec. may be altered	"
Court shall order guardian how to dispose of estate &c.	"	HUSBAND.	
Court shall examine the bonds of guardian once in two years	195	Abandoning wife or family, how proceeded against	435
Guardian shall account to court	197		
" may loan money	"	I	
Guardian, acts of, in regard to partition, shall be binding	427	ILLEGITIMATE CHILDREN.	
GUIDE POSTS.		Shall inherit property that descends through the mother	233
Shall be erected by supervisor	498	Acknowledged by the father deemed legitimate	—
Penalty for injuring	"	Act for the support of	330
HABEAS CORPUS.		Complaint of bastardy, how lodged and justice's warrant vs. reputed father	—
Privilege of, (see constitution of Indiana, art. 1, sec. 14)	37	J. P. and accused may interrogate the complainant, and the examination to be in writing	—
Writ may be issued by judge	326	If complaint is sustained, reputed father shall give bond to overseers of the poor, and satisfy the mother, or give appearance bail, or be committed	—
Form of writ	327	Overseers may prosecute for child's maintenance, where mother neglects to do so	—
Rules of decision, as to discharging or remanding	"		
Judge shall return writ whence it issued, with proper endorsement, and take prisoner's recognizance, if let to bail	"		
Penalty for refusing or disobeying writ	"		
How writ shall be returned	328		

Court may continue the complaint, where complainant is unable to attend	331	INFANT. See minors; courts probate
Plea, and jury trial, and competency of complainant as a witness	—	INFLUENCING JURY. Crime and punishment 215
On a verdict, or confession of guilt, defendant shall give security to abide the order of court or be committed	—	INFRINGEMENT OF FERRY RIGHTS. Crime and punishment 218
Where defendant is not taken, or shall have escaped, J. P. shall certify proceedings to court	—	INJUNCTIONS. May be issued by president or two associates 162-440-441
Clerk shall issue warrant to sheriff	—	INLAND BILLS OF EXCHANGE. Are assignable 118 Damages on protested bills 119
Transcript of J. P. shall be a lien on property of defendant, for the payment of judgment	332	INSANE PERSONS. Acts of void 333 Circuit court on information, shall cause a jury to inspect the person, and inquire as to sanity or insanity, and if insane, shall appoint guardians of person and estate — C. court may order sale of property 334 Judgments, executions and suits, suspended until guardian is appointed — All insane persons, having no property, shall be deemed paupers, & entitled to the benefit of the poor laws —
Person arrested may discharge himself by entering into recognizance, and failing to do so, shall be committed to jail	—	INSOLVENT DEBTORS. See debtors, insolvent
Court may order notice to defendant to be published	—	INSOLVENT ESTATES. How settled, see courts probate
Clerk may issue execution after judgment upon order of the court	—	INSPECTION. Of salt, beef, flour, pork and tobacco 334 Inspector of salt may be appointed by county board, and his duty & compensation — Penalty for selling without inspection 335 Inspector of flour, beef and pork and his oath, duties, and compensation — Penalty for extortion — Barrels of flour, beef and pork, what shall be the weight of, and how branded — Inspector of tobacco, county board may appoint, and his duty 336
Money shall be paid to overseers of poor	—	
Scire facias shall issue on forfeited recognizance	—	
Proceedings on return of scire facias	333	
Order for the maintenance of a child, shall be entered in the nature of a judgment	—	
Security may replevy judgment	—	
IMPROVEMENTS OF LAND. See occupying claimants and ejectment		
INCORPORATIONS. Of agricultural societies 64 How dissolved, (see corporations) 149 Of county libraries 401 " public libraries 401 " towns 588		
INDIANA COLLEGE FUND (See college fund)		
INDIAN. Shall not be a witness against a white 452		
INDICTMENTS. For perjury, requisites of 212		
INFAMOUS CRIMES. What shall be so deemed 220		

Penalty for altering brands 336	Board authorized to draw on fund commissioners 342
INSPECTORS OF ELECTIONS. How and when elected, (see county business) 154	Board shall report to legislature annually 343
INTEREST OF MONEY. Act regulating 336 Rate of, to be six per cent. — " not to be higher than six per cent. unless agreed on in writing 337 Penalty for receiving a higher rate than ten per cent. —	What works shall be put under contract — Board shall render an account of disbursement to auditor, and compensation to auditor — Board may take materials, &c. — Claims for damages, how made 343, 344 Releases to be taken 345 Bridges across canal — Board may cause a wagon way to be constructed in bridges for a rail road or canal, over any river or stream — Compensation to appraisers appointed to assess damages — Board shall procure ground for the use of water power — Water power shall be leased, and reservation in lease, &c. 346 Provisions in regard to Lawrenceburgh and Indianapolis rail road company — Madison, Indianapolis and Lafayette co. may unite with the L. and I. co. 348 Rail road to Rushville shall be constructed by said companies 349 Ratification by board of directors — Faith of the state pledged for the commencement and completion of the works 349 Members of the board and engineers shall not purchase land on the line of the canal — Persons ineligible to appointment as members of the board 350 Loans, how made by fund commissioners — Compensation to com'r — Amount of money taken from Wabash canal fund, shall be refunded — Wabash canal 351 Rate of interest on bonds — Discretionary power of board as to routes — Timber shall be obtained by contracts 352 Schedule to be fixed — Requisitions to be made when timber cannot be had by contract — Distance from which timber shall be taken — Estimate of timber to be furnished —
INTERPRETERS. May be sworn to interpret truly 453	
INTERNAL IMPROVEMENT. Act to provide for a general system 337 Board of int. imp., how appointed, and term of office — Vacancies in canal board, how filled 338 Five members shall constitute a quorum — Oath, bond, duty and compensation of canal comr. — Duty of board — Works authorized — White water canal — Central canal 339 Extension of Wabash and Erie canal — Madison and Lafayette rail road — McAdamized road from New Albany to Vincennes 340 Rail road or turnpike from Jeffersville to Crawfordsville — Improvement of Wabash — Survey, &c. of a rail road or canal from Fort Wayne to Lake Michigan — Duty of board in relation to Wabash and Erie canal 341 Internal improvement fund — Loan authorized — Faith of the state pledged for the payment of the loan — Loan authorized for Wabash and Erie canal 342 Distinct accounts shall be kept of the receipt and disbursement of funds on that part of the W. & E. canal east of Tippecanoe — Board shall elect a president — Board shall appoint a secretary — President may call meetings — Power of the board —	

How timber shall be paid for		
Appraisers, how appointed, oath and duties	353	
“ appeal from		
“ how paid, and who are qualified to serve		
Individuals taking timber, &c. and applying it to other purposes than the public use, how punished		
Timber heretofore taken embraced in this act		
Road from Jeffersonville to Crawfordsville to be a McAdamized road	354	
Road from Jeffersonville to New Albany to be a McAdamized road		
Commissioner may compound with contractor		
Road from Indianapolis to Crawfordsville to be a McAdamized road		
Rail road from Madison to Indianapolis shall be of a single tract		
T rail or flat bar may be used	355	
First lettings shall be between Crawfordsville and Lafayette		
No additional appropriations on this road		
Board of int. imp., mode of electing members of		
Right of way, granted to the state of Illinois, to connect northern rail road with W. & E. canal		
Reserved rights		
Fund commissioners authorized to settle with the Messrs. Cohens of Baltimore, and Messrs. Josephs of N. Y.	356	
Authority of commissioners		
Depositions of engineers, commissioners, &c. may be taken	337	
J		
JAIL.		
Shall be erected in each county, (see county business)	155	
Female convict to be imprisoned in	221	
Incorporated towns may erect	592	
JAILER.		
Shall receive prisoners committed under authority of U. S.	463	
Penalty for neglect of duty	464	
Shall receive prisoners from the marshal of the district		
JEOFAILS.		
See practice at law	476	
JOINT ESTATES.		
Estates in common	357	
JOINT RIGHTS AND OBLIGATIONS.		
Act concerning	357	
Joint tenancies abolished, and declared tenancies in common		
Representatives of joint obligor, shall be chargeable, as if the obligor had been bound severally	358	
JOINT OWNERS.		
Property of one may be attached	80	
JUDICIAL CIRCUITS.		
State shall be divided into, (see courts, circuit)	161	
JUDGES.		
Of supreme and circuit court may not practice law	84	
Of circuit court, may issue writs of habeas corpus, injunction, and ne exeat, and grant interlocutory and restraining orders in vacation, and may take recognizances, (see courts, circuit)	162, 163	
Privileged from arrest	467	
JUDGMENT.		
Of supreme or circuit court, shall bind real estate from date of	316	
Shall be docketed in alphabetical order	317	
Transcript of, may be sent to other counties to bind real estate	316	
Of J. P. may be filed in c. c. to bind real estate	135	
Judgment may be taken vs. defendants found and suggested as to those not found	446	
JUDICIAL PROCEEDINGS.		
Of other states, how authenticated	471	
JURISDICTION.		
Of circuit court, (see c. circuit)	161	
“ probate court, (see probate c.)	172	
“ supreme court, (see sup. court)	199	
“ Justice of the peace in petit misdemeanors	216-360-361	
“ J. P. in civil cases	364	
“ J. P. in replevin	372	
“ c. court in replevin	475	

JURORS.		
Grand and petit jurors, county board shall select	358	shall file transcript with the cl'k of the c. court, &c. 82
How selected when court sits two weeks		Transcripts of J. P., how filed to be a lien on real estate (see clerks) 135
Clerk shall draw names, make out panels and record them		Process of J. P. shall have the force and effect of process of a court of record 148
Clerk shall issue venire	359	Shall ex officio prosecute for violations of revenue laws; (see county treasurer) 161
Penalty for non attendance		May award restitution in forcible entry and detainer 307
County board may select jurors at any session		Jurisdiction in criminal cases 360
Jurors not exempt on account of age		May issue warrant on view or complaint, commit or let to bail recognize witnesses, &c. —
Jurors in new counties, how selected		Recognition to keep the peace, & how and when returned —
Talesmen		Examination of a criminal may be continued 361
Act to regulate the summoning in the 6th judicial circuit		Amount of recognizance, and how payable —
Grand jury shall examine jail	466	Jurisdiction of, in petit misdemeanor, &c. —
Privileged from arrest	467	Fines to be paid over to seminary trustee —
Clerk shall report semi-annually to treasurer, a list of jury fees collected	137	Defendant may have continuance six days and change of venue, as in civil cases, &c. —
Trial by jury in probate court	186	Defendant shall pay or replevy fine or be committed 362
Challenge in state prosecutions	220	Insolvent defendant may serve out fine at 50 cents per day, take insolvent oath and be discharged —
In prosecutions by presentment or indictment, jury shall assess fine	219	County shall pay costs of keeping, and be a privileged creditor —
Juror shall answer on oath, as to his opinion of prisoner's guilt	222	Injured party shall be present at trial, except where the offence was committed in view of J. P. 362
Crime and punishment act, to be given in charge to grand jury		Appeal from assessment of fine to c. c., recognizance in appeal, and proceedings in c. c. —
Juror's fees	293	Plea of conviction or acquittal before J. P. shall bar indictment 363
Trial by jury before J. P. and oath of jury	338	Defendant failing to give bail shall be committed —
When plaintiff shall pay jury		List of fines shall be kept by J. P. which he shall return to county board, verified by oath and list of persons tried by J. P. shall be returned to clerk of c. c., who shall lay it before grand jury —
Civil causes under \$20 may be tried by jury of six men		Clerk of county boards shall record list of fines and make out copy for seminary trustee and prosecuting attorney —
Challenge of, before J. P.		Penalty on J. P. and clerk for neglect —
Juror may be fined for non-attendance before J. P.		Person threatening to injure property may be held to surety of the
Court may give judgment in certain cases, without jury	453	
In all actions before any court of record, three jurors may be challenged		
Non-suit shall not be suffered after jury have retired from the bar		
JUSTICES OF THE PEACE.		
Jurisdiction in domestic attachment	72	
Judgment of, may be appealed from	73	
When J. P., may certify suit to c. court, and proceedings thereon		
Justice's duty when superseded		
“ may issue alias writs of foreign and domestic attachment to any township in the county	79	
Jurisdiction of J. P. in foreign attachment	81	
Where claim exceeds \$100, or where real estate is to be attached, J. P.		

- peace; and affidavit for peace warrant 363
- Jurisdiction in civil cases 364
- Restrictions —
- Concurrent jurisdiction of c. court and J. P. —
- Exclusive jurisdiction of J. P. in civil suits —
- Plaintiff suing in cir. court and not recovering more than \$50, exclusive of interest shall pay costs —
- J. P. may issue writs of ne exeat and attachment according to their restricted jurisdiction —
- Jurisdiction in cases by, and against guardians, administrators, &c., & when proceedings shall be certified to probate court 365
- Defendant shall give special bail —
- Witnesses may be summoned throughout the county —
- Judgments by confession before J. P. must be on affidavit —
- Docket, how kept, and transcript, how demanded —
- A summons shall be the first process vs. a householder, on which the amount demanded shall be endorsed 366
- Summons shall be served three days before trial, by reading or copy —
- Capias may issue vs. a householder on affidavit, or where the plaintiff lives out of the township or county, or where defendant is not a householder and resident —
- Sum demanded shall be endorsed on the writ and until trial, defendant shall give bail or be committed
- Plaintiff shall be notified of defendant's arrest —
- Form of recognizance of special bail 367
- Trials and adjournments not more than 30 days unless by consent —
- Plaintiff failing to attend shall be non-suited, unless &c. —
- Defendant failing to appear, judgment by default —
- Neither party appearing, J. P. may enter non-suit or continuance —
- Plaintiff shall file cause of action —
- Defendant shall file statement of defence 368
- Parties may make their statements before trial, and on trial, restricted to their written statements —
- On appeal the statements of parties shall be sent up to c. court, which shall not be set aside for want of form —
- Defendant shall have the benefit of the general issue —
- Plaintiff shall sue on all his items of account —
- Depositions how taken in trials before J. P. —
- Continuance for sixty days, and dedimus to take depositions 369
- Depositions, how taken and certified —
- Depositions of witness out of the county may be taken with or without dedimus, and how deposition may be authenticated 369
- When dedimus is not necessary —
- Adjournment of a cause may be with or without costs, at the discretion of J. P. —
- Venue, how changed in civil cases; must be on payment of costs by party obtaining, and proceedings thereon —
- Trial by consent of parties —
- Judgment to be entered in four days 370
- New trial and notice —
- If balance be in favor of defendant, he shall have judgment and execution —
- Judgment rendered in the absence of party may be opened on payment of costs, and giving bond to secure judgment —
- When J. P. of an adjoining township shall have jurisdiction —
- Causes before J. P. how arbitrated —
- Summoning and swearing arbitrators and their award —
- Award shall be returned to J. P., judgment thereon and how set aside 371
- Proceedings on award in cir. court on appeal from J. P. and pay to arbitrators —
- Party when and how made witness —
- Party may be subpoenaed to testify, and if out of the county, deposition may be taken —
- Circuit court shall try appeals in like manner 372
- Jurisdiction of J. P. in replevin —
- In what cases replevin will lie before J. P. and affidavit in —
- Writ of replevin, how executed and bond to prosecute replevin —
- Constable may assign forfeited bond to defendant who may commence suit thereon, and damages awarded 373
- If bond is not given in 24 hours, goods shall be restored to defendant —
- On bond being given plaintiff shall have goods, and further proceedings —
- Double costs in, not taxable —
- Execution a lien on personal property from delivery, and constable shall endorse the time —
- Penalty on debtor giving up property not his own —
- Stay of execution —

- For want of bail, or payment, execution to issue forthwith 374
- Recital and command of execution —
- When bail may be entered and execution recalled —
- Property taken on execution, how and when advertised and sold —
- After stay has expired a fi. fa. shall issue, and on return of no goods, &c. scire facias shall go against bail —
- Scire facias shall be served and returned like a summons —
- Bail for stay of execution, judgment vs. shall not be stayed —
- Remedy for bail fearing principal's insolvency 375
- May make affidavit and have execution issued —
- New bail may be given and execution recalled —
- After judgment vs. bail he may have execution, and transcript vs. principal —
- When and how for want of personal property execution may go vs. real estate —
- Transcript may be filed in cir. court to bind real estate, and scire facias and execution thereon, and this remedy extended vs. lands of a decedent by scire facias, &c. —
- Executions may be issued on Sundays in certain cases 376
- Non-resident plaintiff shall give security for costs by bond or endorsement on docket —
- When J. P. may appoint constable, his oath, authority and duty —
- Remedy vs. J. P. for refusing to pay over money collected —
- Judgment vs. J. P. and delivery bond, and against bail shall not be stayed 377
- Alias execution, and venditioni exponas, when to issue —
- Witness disobeying subpoena, how punished, and his liability to the party —
- J. P. may issue attachment vs. for contempt —
- Party subpoenaing more than two witnesses to one point shall pay costs —
- Stock taken in execution, expenses of keeping, how paid 378
- Jury trial, either party may have venire; oath of jury; verdict and jury fee —
- Civil causes under \$20 may be tried by a jury of six men —
- Parties may have the same right of challenge as in cir. court —
- Juror or arbitrator may be fined for non-attendance —
- Contempts before J. P. how punished 379
- Set-off judgments before J. P. may be set off, and how proved —
- Proceedings where judgment is pleaded as a set-off, and penalty for giving false transcript —
- Satisfaction of judgment, how obtained —
- J. P. removing shall vacate his office, and dockets, &c. shall be delivered to successor —
- J. P. absenting himself 30 days shall deposit his docket, &c. with the nearest justice —
- Penalty for neglect to deposit docket 380
- J. P. with whom docket is deposited shall transfer to his own docket and issue execution, and successor of J. P. may issue execution, give transcripts, &c. —
- Proceedings on transcripts to enforce execution; scire facias or capias may issue and stay from first judgment only —
- Replevy bail, proceedings against, removing to another county 381
- Penalty against J. P. for neglect of duty —
- Executions may be served throughout the county —
- J. P. or constable shall not buy a judgment rendered by a J. P. —
- Ca. sa. shall not issue, until return of no goods, &c. unless on affidavit —
- Defendant shall not be detained more than 24 hours for trial; and before proceeding vs. special bail, there shall be a return of not found vs. principal 382
- Surrender of principal may be at any time before judgment vs. the special bail, notice of surrender, and costs —
- Execution defendant may be committed to jail by constable under ca. sa. —
- Pleas in abatement, and of assignment must be sworn to —
- Appeal to cir. court in 30 days, and appeal bond 383
- Appeal shall not be dismissed for informality of bond —
- Execution if issued, shall be recalled and transcript &c. how sent up —
- Appeal to be filed ten days before court or continued —
- Mileage to J. P. for travelling to file appeal in the clerk's office —
- Sureties in appeal may object to continuance —
- Other surety may be given by app'lnt 384
- Appeal, how tried in circuit court, and costs how taxed —

Appeal may be authorized in 30 days in certain cases	—	Forms for j. p.: attach'm't & sum'n's to garnishee	395
Attorney acting as J. P. shall not appear in appeals from his own docket	—	oath for landlord's warrant	"
Ne exeat may be issued by J. P.	—	landlord's warrant	"
Affidavit for writ and bond	385	writ of replevin	396
Defendant taken on, shall give bail or be committed, and how discharged	"	judgm't in state case, scire facias on transcript	"
from trial of	"	scire facias in other cases	397
execution in, may be stayed	"	judgm't on scire facias	"
defendant not liable for costs in certain cases, and remedy for special bail, &c.	386	K	
Right of property, in trial of, jury shall find the value of property	"	KIDNAPPING.	
Surety may object to a stay of execution being taken by principal	"	Crime and punishment	209
Capias may issue on the Sabbath	"	L	
Mandamus may issue to compel J. P. to enter judgment	"	LANDLORD AND TENANT.	
J. P. shall give bond for the faithful discharge of his duties, on which suit may be brought, and no stay of execution on judgment	"	Landlord may distrain for rent; (see rent and distress)	472
Penalty for failing to give bond	387	LANDS.	
Suits on official bond of J. P. or constable may be brought before J. P. where damages claimed do not exceed 100 dollars	"	List of U. States' land to be annually procured and forwarded to cl'ks of counties	90
Statement of complaint shall be filed three days before trial; the evidence, &c.	"	Justice's transcript filed in clerk's office shall be a lien on; (see cl'ks)	135
Any matter of defence may be given under the general issue	"	Act to provide for making partial payments on canal & school lands	397
Exceptions	"	LARCENY, GRAND.	
Forms for J. P., viz: summons	389	Crime and punishment	207
capias	"	LARCENY, PETIT.	
subpoena	"	Crime and punishment	208
judgment in debt	"	LAWS IN FORCE.	
in assumpsit	390	Common law of England, and statutes in aid prior to the fourth year of James I	398
in covenant	"	LAWS IN NEW COUNTIES.	
in trespass	"	Act to provide for carrying into effect	"
in case	"	Gov. shall appoint sheriff and issue writ of election for other county	"
of non-suit	"	officers	"
vs. def't for	"	Writ of election, how executed, and return thereof	399
not appear'ng	"	Notice of election, certificates, oaths of office, &c.	"
on trial with-	"	Officers falling within the bounds of new counties shall continue to act, and civil and fiscal proceedings shall not be affected	"
out jr. for def't	"	Contested elections in new counties shall be tried at the nearest county seat	400
on ver. of ju.	"	LEAP YEAR.	
for pl'ff in re-	"	In leap year the 28th and 29th of February shall be as one day	454
plevin	391		
for def't in	"		
replevin	"		
execut'n, fieri facias (fi. fa.)	"		
capias ad satisfac-	"		
ciendum (ca. sa.)	"		
affidavit for state warrant	392		
state warrant	"		
search warrant	"		
peace warrant	393		
recognition of def't	"		
do	394		
of witness	"		
mittimus	"		

LEASES.		Shareholders may choose directors, who shall appoint one of their number to be president	404
To in writing, also assignment thereof	311	Chairman or clerk shall swear to statement of proceedings, which shall be recorded by recorder	"
LEGACY.		Corporate powers	"
To a subscribing witness void	315	Shall not issue notes or bills of credit	"
LEGISLATURE.		May make by-laws, tax members, have a seal, &c.	405
Act to facilitate the business of	400	Further powers of president and directors	"
LEWDNESS.		May receive donations	"
Crime and punishment	217	This act shall not affect county libraries	"
LICENSE.		LIBRARY, STATE.	
To attorneys at law	83	Act concerning	405
To vender of merchandize	160	Secretary of state shall be librarian ex officio	"
(See county treasurer; co. business)		Books of, for whose use	406
LIEN.		Librarian shall exchange laws with other states	"
Of consignee on goods attached	76	Librarian shall make and publish rules for the government of library	"
Of justice's transcript on land	135	Librarian, duty of	"
(See probate court)	183	Annual appropriation for	407
Of judgment upon real estate regulated and limited	316	LIEUTENANT GOVERNOR.	
Of justices' execution on personal property	373	His election, how certified, transmitted	247, 248
Of taxes on lands	484	how contested	251
Mechanics' lien on buildings	412	LIMITATION.	
LIBRARIES, COUNTY.		Of state prosecutions	222
How incorporated, and notice how given	401	Of action in disseizin	242
Trustees, term of service, and when elected	"	Of actions of ejectment	260
Certificate of election and oath of office	"	In forcible entry and detainer	311
Trustees shall elect a president and be a body corporate,	"	Of actions in general	447
Vacancies, how filled; seal; notice of election shall be given by sheriff, and elections how conducted	402	Limited partnerships; (see partnerships limited)	429
Librarian, treasurer, and other officers shall be appointed by trustees, by-laws, treas. bond, &c.	"	LOAN OFFICE.	
County agent shall pay to treasurer of library, and remedy against him for failure	"	(See college funds)	139
President pro tem.; quorum; library funds, how expended; and proviso	"	LOTTERIES.	
Ten per cent. to be reserved for county libraries on sales of lots at county seat, and how collected	403	Crime and punishment	223
How agent shall collect library fund where county orders have been received for lots sold	"	LYCEUMS.	
How fund shall be recovered from co. where it has not been reserved by agent	"	How incorporated	407
Library b'ks exempt from execution, on judgment against county	"	May adopt constitution and by-laws	"
LIBRARIES, PUBLIC.		Constitution of, shall be signed by 20 citizens, and recorded by recorder, previous to exercising corporate powers	"
How established	404	M	
		MALICIOUS MAYHEM.	
		Crime and punishment	209

MALICIOUS PROSECUTION. Crime and punishment	215	MASONIC LODGES. Deeds to, how made	453
MALICIOUS TRESPASS. Crime and punishment	213, 226	MASTER AND SERVANT. (See apprentices)	67
MANDAMUS & QUO WARRANTO. Act in relation to proceedings upon writ of	407	Master may travel through this state with his slaves	420
Return may be traversed; replication; proceedings, issue of trial; verdict; judgment; peremptory mandamus	408	Master may be sued on indentures given by overseers of the poor	432
Recovery a bar to any other action	"	MASTERS IN CHANCERY. Shall be appointed by pres't judge, their oath and powers	443
Cir. court may enlarge and transfer return	"	MAYHEM. Malicious	209
Officers and corporations liable for intrusions	"	Simple	213
Prosecuting attorney shall file information	"	MEASURES AND WEIGHTS. See weights and measures	603
Information may be filed against several persons	"	MECHANICS' LIEN ON BUILDINGS. Act, giving mechanics a lien on buildings	412
Defendants found guilty shall be removed from office, fined and pay costs	409	Mechanic may enforce lien by filing bill in chancery, and person's having lien may join	"
How judgment may be rendered vs. corporations	"	Court shall decree amount	"
After judgment, court of chancery may restrain corporation, appoint a receiver of property and effects, and make distribution	"	Claims shall bear interest	"
Time to plead, &c. shall be given in all cases	409	Defendant may file bond, with security, for the payment of the amt found due, and release his property from lean	"
Cir. court may issue mandamus to compel J. P. to enter judgment	386	Claims, how and when proved, and cross bill need not be filed	413
MANSLAUGHTER. Crime and punishment	207	Answers, how and when filed	"
MARKS, BRANDS, &c. Altering; crime and punishment	211	When process is not served in time, the cause shall not be tried at the first term, unless by consent	"
MARRIAGE. Act to regulate	410	Claimant shall file in recorder's office in sixty days after debt becomes due, notice of intention to hold lien on property, which shall be recorded	"
Who may contract	"	Journeyman may claim against owner	"
Who may solemnize	"	MEDICAL SOCIETIES. Act regulating	414
License to be issued by clerk, and be recorded	"	Proceedings of state and district societies, legalized, and their powers	"
Minors shall have consent of parents or guardians, if in the state; and consent how proved	"	Annual meeting of	"
Penalty for granting license without consent of parents	"	Who may be members of	415
Penalty for granting license to non-residents, and proof of residence, how made to clerk	"	May make by-laws	"
Certificate of marriage shall be filed and recorded within three months	411	MEMBERS OF CONGRESS. See elections, general	
Proof of residence and age	"	MEMBERS OF GENERAL ASSEMBLY. Privileged from arrest	466
Penalty for solemnizing marriages contrary to law	"		
Marriages heretofore solemnized declared legal	"		

MEETING HOUSES. Trustees to receive deeds for, how appointed	551	May be issued by j. p. (see justices of the peace)	384
MILITIA. Privileged from arrest	467	How issued by president or associates, (see practice in chancery)	441
MILLS AND MILLERS. Water grist mills; rates of toll	415	Act to authorize writs of	417
Miller's accountability for grain, bags, &c.	"	In what cases, may be issued	"
Bags &c. shall be marked, and how	"	Co-obligors and co-debtors may sue out writs	"
Where water is backed, owner of water mill may erect fortification	"	Writs shall not issue except on petition and affidavit	"
Millers shall grind in turn; receive, load, and unload grain; be exempt from militia duty; and penalty for exacting more than legal toll	416	Endorsement on writ, and bond	"
Steam mills, owners of, shall post up rates of toll, and charges for grinding, and penalty for neglecting to do so, and for taking higher rates	"	Suit may be brought on bond	"
MILL SEATS. How condemned, (see ad quad damnum)	59	When and where writs shall be returned	"
MINISTERS OF THE GOSPEL. May solemnize marriages	410	Writ shall contain a summons to defendant, who shall give bond with security for, &c.	418
MINORS. Contracts of, void	68	Surety may surrender principal	"
(See probate court; marriage)		Proceedings on return of writ	"
Selling spirits to, (crime and punishment)	219	NEGLIGENCE. Of ferrymen, (see crime and punishment)	215
May not contract marriage without consent of parents or guardians	410	Official negligence, " "	216
Taken up as vagrants, may be bound out	600	NEGROES AND MULATTOES. Hereafter coming into this state, shall give bond for good behaviour &c. and conviction of a crime shall forfeit the bond	418
MORTGAGE. How foreclosed, (see execution)	234	Failing to give bond, may be taken before j. p. and hired out six months; proceeds to go to negro's benefit, or be removed as a pauper	"
Effect of foreclosure	235	Penalty on sheriff or jailer for committing negro, without due process of law	"
Shall be proven and recorded within 90 days	312	Penalty for harboring negro who has not given bond	"
Satisfaction of, how entered	314	Masters may travel with their slaves through this state	"
Form of mortgage, given to school commissioner	536	NEW COUNTIES. How and where contested elections of officers for, shall be tried	259
Form of mortgage, given to superintendent of loan office	141	How laws shall be carried into effect in, officers how appointed and elected	398, 399
For surplus revenue, how foreclosed	481	How seats of justice may be established in	505
MURDER. Crime and punishment	207	(See seats of justice)	
NATURALIZATION. Of foreigners	54	NEW TRIAL. Not more than two to be granted	454
NE EXEAT. Writs of, may be issued by two associates or president judge, in vacation, (see courts, circuit)	162	NON-SUIT. Must be suffered before jury retire	453
		NOTARY PUBLIC. Evidence of	274
		Act establishing the office, and defining the duties of	420

Shall be appointed by the governor for five years	420	Additional bond being filed, applicant shall be exonerated from further liability	"
Shall take an oath; give bond; procure a seal; may take acknowledgments of deeds &c., and his fees therefor	"	Bonds, how declared on; pleas of exoneration, and operation thereof	"
Act declaratory of the powers of notaries public	"	Application to be discharged from subsequent liability, may be made before the clerk in vacation	"
Seal and certificate of notary to be of equal validity with that of clerks	421	Additional bond, how approved	425
		Application, summons, &c. shall be filed with original bond, copies of which shall be prima facie evidence	425
NOTES.		Requisition of summons	425
Negotiable and assignable	118	Penalty for refusing to give additional bond, &c.	"
NOTICE TO QUIT.		OFFICIAL NEGLIGENCE.	
When it shall, and when it need not be given	584, 585	Crime and punishment	216
NUNCUPATIVE WILL.		ORDINANCE.	
Validity of, and how proved	315	Of congress for the government of the territory N. W. of the river Ohio	23
NUISANCE.		" the convention in favor of going into a state government	35
Crime and punishment	214	OVERSEERS OF THE POOR.	
O		How and when elected; (see county business)	154
OBSTRUCTING THE ARREST OF SLAVES.		Duties of; (see poor, also illegitimate children)	
See act of congress	323	P	
OBSTRUCTING FERRY LANDING.		PARDON.	
Penalty for	306	Shall not restore privileges to person convicted of infamous crime	220
OBSTRUCTING LEGAL NOTICES.		PETITION OF REAL ESTATE.	
Crime and punishment	213	Act to provide for	426
OBSTRUCTING NAVIGATION.		Application to c. c., appointment, oath and duty of com'rs	"
Crime and punishment	215	Return of com'rs, and its requisites	"
OBSTRUCTING ROAD.		" to be recorded and its effect	"
Penalty for	498	Vacancies in office of com'rs, how filled	"
" for suffering obstruction to remain	"	Where com'rs report that the estate cannot be divided, court shall order sale; terms of sale	"
OCCUPYING CLAIMANTS, AND EJECTMENT.		Mutual releases, deed to purchaser and its effect	427
See ejectment	260	Compensation to commissioners	"
OFFENCES AGAINST REVENUE.		Guardian, acts of, in regard to partition, binding on minors	"
Crime and punishment	216	Partition shall not be made contrary to a devise, how made where estate lies in several counties	"
OFFICERS & THEIR SECURITIES.		Commissioners may assign dower, if widow request	"
Act requiring certain public officers to give additional security	422	Advancements to be considered, in making partition among heirs	"
Citation for failure to give bond or additional security	423		
Proceedings to enforce security	"		
Act for the relief of the security of certain officers	"		
How applicant may be discharged from liability	"		
Application being made in writing, summons shall issue against the officer who gave the bond	424		

Review of partition, how granted	428	PLAYING BULLETS.	
Law and equity shall have concurrent jurisdiction in	"	On street or highway, (see crime and punishment)	219
PARTNERSHIPS, LIMITED.		PLEAS.	
Act relative to	"	Certain pleas before J. P. must be sworn to	382
May be formed, and how; style of the firm, and their liabilities as general and special partners	"	" " in c. court to be sworn to	449
Names of the partners to be registered in the clerk's office, their residence, amount and affidavit of capital; period of partnership, &c.	429	POOR.	
May not assign or convey partnership property in certain cases	"	Overseers of, how and when elected	154
General partners shall be liable to account to special partners, and to each other	"	Oath of overseers of the poor	430
May make annual dividends of profits and affidavit of amount of profits	"	Style and corporate powers	431
Suit may be in the name of the general partners; and names of general partners shall be published in newspaper	430	Poor shall be farmed out, and overseers may make temporary contracts in the interim	"
PATENTS.		County boards may make annual allowances to certain paupers	"
For seminary lands, to be recorded by treasurer of state	92	Overseers shall bind, rather than farm out minors	"
PAUPERS.		" shall make return to clerk	"
Bringing them into this state, (see crime and punishment)	223	" shall inquire into the treatment of paupers, and how to proceed	"
See poor		" shall put poor children as apprentices	"
PAYMENT.		" shall take duplicate indentures; have one recorded by the recorder, and penalty on recorder for not recording	432
Plea of	450-462	Copy of recorded indenture shall be evidence, and how suit may be brought against master on forfeited indenture	"
PENITENTIARY.		Poor book, how kept; and compensation to overseer	"
See state prison	572	County board may appoint some person to take charge of the poor	"
PERJURY.		Person so employed shall give bond; and make semi-annual report to board	433
Crime and punishment	211	Children shall be educated at asylum, which the directors shall superintend	"
Subornation of perjury, do.	"	Penalty on overseer for refusing to serve	"
In false voluntary affidavits	212	Physician may be employed	"
PERMIT.		Overseer removing, or administrator of deceased overseer, shall deliver over books, &c. to some other overseer	"
To vend merchandize, may be issued by clerk in vacation; (see county treasurer)	160	Legal settlement of poor, what shall be deemed	"
PETIT JURORS.		" of feme covert	"
How selected	358	Paupers, how removed, unless bond be given to indemnify	434
PETIT MISDEMEANORS.		Transient poor, how provided for;	
See crime and punishment			
PLATS OF TOWNS.			
See town plats			

- Payment, plea of, to action on bond, &c.; in mutual dealings; judgment for plaintiff; for defendant 450
- Consideration; failure of, in whole or in part may be pleaded 451
- Pleadings shall be made up by the calling of the cause, and judgment for failure, unless time be given; amendment of, and terms of continuance, by reason of material amendment; for other cause 452
- Interlocutory judgment may be set aside and plaintiff have continuance 452
- Plaintiff failing to prosecute, and defendant to appear, non-suit or continuance may be granted 452
- Filing pleadings, time to be endorsed 452
- Demurrer, what shall be cause of Ejectment; declaration in, shall not be objected to after issue joined 452
- Actionable words; charge of incest, fornication, adultery, whoredom, &c. shall be actionable without special damage 452
- Deeds, bonds, &c. shall be sealed with wax, wafer or by a scrawl 452
- Negro, mulatto or Indian, shall only be a witness, where negroes, &c. are parties 452
- Deposition, within the state may be taken by J. P. and how authenticated; taken by J. P. out of the state, how authenticated 453
- Dedimus to take may issue without affidavit 453
- " of witness about leaving the state, may be taken de bene esse 453
- " notice to be given 453
- Judgment may be rendered by court, without a jury 453
- Jury; challenges allowed in civil causes 453
- Elizors, may be appointed; their oath, bond and duties 453
- Interpreters, may be called and sworn 453
- Non-suit must be suffered before jury retire 453
- Faulty counts in declaration, disregarded 454
- Verdict in detinue omitting price or value, may be supplied by jury of inquiry; if an item in detinue be omitted by jury, verdict still good 454
- New trials, not more than two shall be granted 454
- Special bail, may surrender principal, any time before judgment vs. bail; exoneretur; bail-piece from another state; from another county, and authentication of 454
- Ca. sa. from another county, how executed 454
- Leap-year, 28th and 29th February to be considered one day 454
- Suits abated, by death of plaintiff, how revived by administrator; by administrator de bonis non 454
- " by death of defendant, how revived vs. heirs, executors, &c.; vs. administrator de bonis non 455
- Co-plaintiff's or co-defendant's death shall not abate suit; nor marriage of feme sole, after suit brought 455
- Title bond, how enforced against heirs of deceased obligor, to perfect a title; application to circuit court; notice of application; report of commissioner; his compensation; no conveyance if objected to 455
- Concurrent jurisdiction of law and chancery 456
- Jeofails 456
- Proceedings of circuit court, to be drawn up each day and signed by president or associates 456
- Execution docket, how kept 457
- Subpoenas, when and how issued; not more than three to any one point, or the party calling to pay costs 457
- Scire facias, may be served as a summons 457
- Cause reversed by supreme court and remanded, shall not be tried in circuit court the first term 457
- The 64th section limited in its construction 457
- Money due by final decree of foreign court may be recovered in an action of debt 458
- Land office certificates, evidence of legal title 458
- Declarations on bills and promissory notes unnecessary 458
- In appeals, parties may amend on payment of costs 458
- In actions of ejectment, &c., where judgment is for defendant, he may take judgment for costs against the lessor &c. in lieu of 458

- the order and writ of attachment, as heretofore 458
- General issue, evidence under, allowed in indictments, 458
- Sheriffs &c. authorized to assign to defendant, bonds taken by predecessors in certain cases 459
- Executors &c. may require claims to be proved before the probate court, and manner of proof 459
- Duty of the court, and appeal from decision of 459
- Jurisdiction of circuit court in matters of probate 459
- Jurisdiction of probate court in partition and dower 459
- Concurrent jurisdiction to probate courts 460
- Challenge to the array being sustained, another jury may be summoned from among the bystanders 460
- Collector's certificate to decedents, transferable 460
- In case of prevalence of disease, courts may be adjourned to any time not exceeding three months, clerk's duty, and effect of such special adjournment 460
- Suits &c. shall not be discontinued in consequence of the court failing to sit at the regular term 460
- Affidavit for continuance must state the facts expected to be proved 461
- Costs in actions of tort 461
- Repeal of the 13th section 461
- Dismissed in vacation, effect of, and costs 461
- Suits may be subsequently brought for the same cause 461
- To a plea of payment setting forth matter of set-off, several matters of fact may be replied 462
- Replication of statute of limitations, to what extent it shall operate 462
- Pleading may be withdrawn, and demurrer put in at any time before trial 462
- Interest shall be allowed on judgments on scire facias for execution on judgments at law 462
- Writs, &c., may be issued on the Sabbath in certain cases 462
- Clerks may order bail to be required 462
- In suits on notes, &c. payable at a particular place, demand at the place need not be averred 462
- Juries de medietate lingue abolished 463
- Subpoenas may be served by copy 463
- Tender of fees 463
- PRISONERS.
- Committed under authority of U. S. shall be received by jailer of any county 464
- Penalty on jailer for neglect of duty U. S. to support criminals 464
- Jailers to receive prisoners from marshal of district 464
- Circuit and district courts of U. S. may hold their sessions in supreme court room 464
- Prisoners connected under laws of U. S. may be confined in the state prison 464
- PRISON AND PRISON BOUNDS.
- Limits of prison bounds co-extensive with the county 465
- Who are entitled to prison bounds, and bond of prisoner 465
- Sheriff liable for solvency of bail, and conditions of bond 465
- Sheriff may plead general issue, &c. in suits for escapes 465
- Liability of sheriff and keeper of jail for escapes 465
- Process shall be kept by jailer 465
- Grand jury shall examine prison 466
- Separate rooms shall be kept for the sexes 466
- Compensation for keeping prisoners, how made 466
- PRIVILEGE.
- From arrest; of members and officers of the general assembly; electors; judges and clerk of sup. and circuit courts; county commissioners; justices of the peace; attorneys and counsellors at law; sheriffs; coroners, criers; suitors; witnesses; jurors; militia men 468-9
- No arrest in civil suit, on Sunday; nor in a place of religious worship; nor on the 4th of July; nor in legislative chamber; nor in any court of justice 469
- Arrests made on water course bounding this state shall be lawful 470
- Persons illegally arrested may be discharged by habeas corpus or on motion 470

PROBATE COURT.	
(See court probate)	
PROCESS.	
Issuing out of cir. court shall be in the name of the state of Indiana; (see court circuit)	162
Issuing out of probate court, how issued, tested, sealed, &c.	173
Obstructing legal process	213
In chancery, how issued, and when, to another county	438
Against a corporation	445
At law; when it may issue to another county	447
PROFANE SWEARING.	
Crime and punishment	219
PROPERTY EXEMPT.	
From execution	277-287
From distress	475
PROSECUTING ATTORNEYS.	
(See attorneys, prosecuting)	87
PROTESTED BILLS.	
Damages on	119
PUBLIC BUILDINGS.	
Shall be erected in each county by county board; (see co. business)	155
PUBLIC LIBRARIES.	
How incorporated	404
Q	
QUO WARRANTO.	
(See mandamus and quo warranto)	407
R	
RAPE.	
Crime and punishment	209
REAL AND PERSONAL ESTATE.	
Subject to execution	276
RECEIVING STOLEN GOODS.	
Crime and punishment	208
RECOGNIZANCES.	
May be taken by judge of cir. court, and how payable; see court cir.	162
Amount of, to be taken by sheriff, shall be endorsed on writ	221
Shall not be void for want of form	221
To keep the peace, and of witnesses at court	360
Of special bail in circuit court	446
RECORDS, &c.	
Of other states, how authenticated	471
Of courts of United States	—
RENT AND DISTRESS.	
Distress, how made; warrant, how obtained; complaint on oath	472
Tenant may replevy in five days; notice of distress to tenant, how given	—
Appraisalment after five days; appraiser's oath; sale of goods after ten days	—
Rescue of goods, penalty for	—
Distress shall not be driven out of county; shall be reasonable: penalty for distraining and selling, where no rent is due	472-3
Landlord's lien on property on premises for one year's rent; how he may assert his lien, if property is levied by execution; shall prove his claim before J. P.; notify officer; J. P. shall certify proof to the officer; and if appeal be taken officer shall hold the money until suit is determined	473
Second distress may be made if first be insufficient	474
Goods removed to avoid distress, liable for thirty days, wherever found, unless sold bona fide	—
Lessor may distrain cattle, corn, grass, hops, roots, pulse, &c. growing	—
Claim to property distrained, how tried	—
Distress may be discharged by confessing and replevying judgment	—
Distress may be made after expiration of lessee's term, if lessor's title remain	475
What property shall be exempt from distress and sale	—
Property exempt from execution is exempt from distress	—
Use and occupation, remedy for, in assumpsit	475
REPLEVY.	
None allowed on delivery bonds	148
Allowed on judgment of probate court, as in circuit court	176

REPAIRS.	
Act subjecting certain articles to sale for repairs after a certain period	421
Persons failing to pay in one year, article may be sold for repairs	—
Balance of sale, after paying the claim, to be deposited in county treasury, and if not demanded in one year treasurer may loan	—
REPLEVIN.	
Jurisdiction of J. P. in, to \$50; see justices of the peace	372
Jurisdiction of cir. court in	475
For what cause writ may issue; affidavit	476
Clerk shall issue writ and mandate thereof	—
Bond to prosecute and return goods shall be taken by sheriff; assignment of bond, action thereon and damages; if bond be not given in 24 hours goods to be sold	—
Proceedings and judgment where there is non-suit	476-7
In what cases jury may assess damages	477
Defendant may avow generally, for rent	—
Judgment vs. plaintiff in case of distress for rent, shall carry double costs	—
Writ shall not extend to execution defendant	—
REVENUE, SURPLUS.	
Act to provide for distributing	—
Shall be deposited in state treasury	—
Treasurer may hire an additional clerk	478
Mode of funding one half of rev.	—
How apportioned among the cos.	—
An agent shall be appointed in each county; his duty, shall give bond	—
Suit may be brought against agent for neglect	479
Treasurer shall pay over the proper amount to agent, who shall loan it at 8 per cent. and take bond and mortgage	—
Agent may loan upon personal security	480
Term of loan when made on mortgage	—
Term of loan when on personal security	—
RECORDERS.	
Office of recorder established; where to be kept; his bond, and for whose use; penalty for acting before bond is given	468
Shall record deeds in regular succession, and give receipts therefor	468-9
Penalty against, for violation of duty	469
Shall make index of deeds recorded in alphabetical order	—
Shall record ear-marks, and his fees therefor	—
Mortgages recorded, how discharged and satisfied	—
Certificates of satisfaction to be recorded	470
This act shall not apply to superintendents of loan office, or school commissioner	—
Recorder may appoint deputy	—
shall record town plats, bonds, &c.	—
penalty of, for neglect of duty	—
Vacancies, how filled	—
Clerk of supreme court may record deeds, &c.	136
Fees of recorder	294
May issue fee bills	297
Mortgages on personal property may be recorded	470-1
Allowed, of fines assessed in circuit court	220
Allowed on judgments in c. court	280
Sheriff may take replevy recognition and effect of	—
Replevy bonds shall be entered on judgment docket, but shall not be a satisfaction of the original judgment	284
Fines, how replevied on justice's docket	362
Judgment of J. P., how replevied	373
No replevy allowed J. P. on judgment for money collected; nor on delivery bonds; nor in favor of bail for stay of execution	377
Replevy of judgment confessed for rent distrained for	475
RESCUE.	
Crime and punishment	213
Rescuing fugitive from justice, (act of congress)	323

- Agent's fee, by whom paid 480
 Shall not loan more than \$400 to one person 481
 Shall pay interest to school commissioner who shall distribute to the townships —
 Interest appropriated for five years —
 Mortgage to be recorded, and how foreclosed —
 Treasurer shall give notice of reception of surplus revenue —
 Agent failing to apply, treasurer shall loan it —
 Agent failing to accept, county board shall appoint one —
 Form of mortgage 482
 How acknowledged 483
 Form of bond —
 Judgments on bond shall draw eight per cent. interest —
 Applicant shall file affidavit —
 Agent shall report to treasurer, who shall report to legislature —
 Agent shall keep a register of mortgages 484
 Liens not to be discharged by lands forfeited for non-payment of tax —
 Remaining half of revenue, shall be subscribed as stock to state bank on the part of the state 484
 First instalment, (for 12th branch,) how paid —
 Additional branches to be located —
 Treasurers shall pay over to state bank 485
 Dividend on stock to be paid over to fund commissioner —
 Consent of state bank and branches shall be obtained, &c. —
 Surplus on hand at the time of increasing the stock, how disposed of —
 On failure of branches to receive the amount due them, to be paid over to sinking fund, which may be loaned by commissioner 485, 486
 Names of agents 486, 487, 488
 Further provisions 488, 489
 Treasurer authorized to receive 4th instalment, which shall be paid over to com'r of the sinking fund 489
 Future loans, how made —
 In case of failure, bank to be reimbursed —
 State bonds shall be issued, and how disposed of 490
- RIOT.**
- Crime and punishment 210
- RIGHT OF PROPERTY.**
- Levied under domestic attachment, how tried 74
 Appeal from trial of, in domestic attachment —
 In trials of, the jury shall find the value of property —
 Property distrained, right of, how tried 386
 Act regulating trials of, 474
 Claimant, before claim is decided, shall give delivery bond, and property shall be delivered to claimant 490
 Successful claimant not entitled to delivery of property until time for taking appeal, &c. —
 Damages on breach of bond 491
 Duty of j. p. before whom claim is tried —
 Change of venue, or new trials may be granted —
 No cause of action need be filed; trial 491
 Verdict of jury; appeal; trial; damages; appeal to supreme court 492
 Partners, claim of, shall not prevent sale —
 Judgment conclusive, &c. —
 Attachment, proceedings in cases of —
- ROADS AND HIGHWAYS.**
- All matters in regard to, shall be ordered by county board 493
 New roads: petition for; notice of application; viewers appointed, & their oath and duties; shall not run through enclosure of one year's standing, unless a good way cannot otherwise be had: viewers shall make return; if not objected to, shall be opened 493
 Remonstrance against road, by individual: reviewers, and their oath and duties. —
 Assessment of damages and report: if report be in favor of objector, county shall pay damages, and costs: if against him, he shall pay costs 494
 Three freeholders may remonstrate for non-utility: if report be against the utility of the road, if opened must be at expense of petitioners —
 Owner of land, may apply for leave to turn road through his land at his own expense: viewers and their report: when opened shall be recorded —
- REVIVOR.**
- See practice at law, and practice in chancery.
- REVOLUTIONARY SOLDIERS.**
- Exempt from imprisonment for debt 278

- Vacation of road, petition for, to be presented to county board, read and laid over: again read: order that it be vacated if not objected to: 494
 If objected to, viewers shall be appointed: judgment conclusive, unless appealed from in nine months 495
 Cart way, how obtained: shall be recorded: if objected to, damages shall be paid by applicant: owner of land may turn cart way: gates may be hung on, which shall be kept in repair, and penalty for not keeping in repair —
 Who shall work on public roads —
 Proviso as to Lawrence and Daviess —
 Non-resident landholder shall pay road tax —
 List of, to be delivered to supervisor: duplicate assessment list shall contain column for road tax: may be collected by sale of lands: receipt of supervisor shall discharge road tax: road tax on town lots not incorporated 496
 Penalty for failing to work, when notified three days —
 Supervisor shall expend money on his road district: shall be witness against delinquent: written notice to work, sufficient —
 Labor, with wagons, teams, ploughs, &c. how credited 497
 Oath of supervisor: penalty on householder, refusing to serve as supervisor —
 Hands and districts shall be assigned by county board —
 Sheriff shall deliver appointment to supervisor —
 Hands may be called out whenever needful —
 When hands are called to perform extra work, to have a credit for succeeding year 497
 Supervisor may enter upon adjoining lands to repair roads, dig drains, take timber, gravel, &c.; damages to be paid by county 497
 Penalty for injuring drains, &c. —
 Guide posts shall be erected by supervisor: penalty for injuring —
 Obstructing road, penalty for: and for suffering obstruction to remain: supervisor shall inform against those guilty —
 Owner of land adjoining, shall remove obstruction 499
 Roads, how to be worked —
 Compensation to supervisor: penalty against, for neglect of duty —
 This act to be given in charge to grand juries —
- Supervisor may purchase ploughs, scrapers, &c. 499
 Road on county line, to be worked as if in the county —
 Supervisor may be directed by county board to build toll bridges, or they may appoint superintendent: oath of superintendent: shall give notice: let the contract: take bond: receive subscriptions, &c. 500
 Toll bridges may be built as ferries are let: county may purchase out at any time —
 Road fund may be applied to building bridges —
 Penalty for horse racing, &c., along or across public roads —
 Duty of commissioners appointed by the legislature to view, mark, and locate state road —
 Vacancy may be filled by c'ty board 501
 Compensation to commissioner —
 Com'r may employ a surveyor, &c. —
 " shall make report of their proceedings —
 Remonstrance against state roads by owners of land; reviewers, their oath and duties; assessment of damages, and report —
 If report be in favor of objector, co. shall pay costs and damages —
 If against objector, he shall pay costs 502
 Individual application to c'ty board, how made —
 County board shall appoint commissioners, and their duties —
 Road to be opened at the expense of applicant —
 How changed on application of 12 or 24 householders —
 Notice of application —
 Petition, how disposed of —
 County board shall appoint 3 com'rs and their duties —
 Road, how opened —
 Compensation to com'rs 503
 Old road shall be vacated —
 Report against a road, how made —
 Applicants for proposed change shall pay costs —
 State road running into another county, how changed —
 Clerk to notify clerk of adjacent co. —
 Notice to be laid before c. court —
 Each county shall appoint 3 com'rs —
 Sheriff shall notify com'rs —
 Oath and duties of com'r —
 Report of majority shall be confirm'd —
 Compensation to com'rs, chainmen, and markers 504
 State roads, how kept in repair —
 Penalty for driving carriages, &c. —

too fast over bridges		504	Com'r when elected and for what time	
Notice to vacate state road		"	"	
Saving in favor of several counties		"	Vacancies, how filled	510
5000 copies of this law to be print'd		"	Bond and oath of com'r	"
		"	His office, where held	"
ROBBERY.			May transact business by deputy	"
Crime and punishment	207		May be removed, and for what cause	"
			Jurisdiction of, where school lands lie in different townships	"
ROUT.		212	When cong. township owns land in two or more counties, trustees shall decide to which school com'r it belongs	"
Crime and punishment			Com'r shall have the same power as if the land was in the same county where he was elected	511
S			Com'r shall keep separate accounts shall calculate interest and pay the same over	"
SABBATH.			shall make annual report in May	"
Attachment may be issued on	77		shall purchase blank books	"
Violation of, crime and punishment	219		books of, to be examined by county board	"
Ca. sa. may be issued on	386		who shall be eligible	"
			Election for trustees when held, and notice of election how given	"
SALARIES.			Inspector of election shall be appointed	"
Of auditor of public accounts	90		Inspector failing to attend, voters may appoint one	512
Of treasurer of state	92		Mode of conducting election	"
Of governor	302		Qualification and term of service of trustee	"
Of secretary of state	557		Mode of determining when two or more persons receive the same number of votes	"
			Judges and clerks shall certify election to school commissioner, who shall give certificate of election	"
SALES.			One trustee shall be elected annually	"
By constables: see constables	144		Com'r shall fill vacancies	"
			shall appoint trustees	513
SALINE RESERVATIONS.			county board shall appoint if there be none	"
Moneys arising from leases of, to be loaned and rate of interest	505		Trustees may be removed; shall take oath, term of service; appoint cl'k	"
Interest set apart for schools	"		Clerk shall convene board, who shall divide their townships into school districts	"
			May subdivide districts	"
SALT.		334	Description of district shall be recorded	514
Inspection of			Books, &c. of trustee, subject to inspection	"
			Township treasurer shall be appointed; give bond; may be removed; shall make annual report	"
SALT PETRE CAVES.		218		
Keeping unenclosed: crime and punishment				
SEAL.				
Of county board	152			
Of circuit court	161			
Of supreme court	206			
Of probate court	174			
SCIRE FACIAS.				
How sued out on judgment vs. administrators, &c. see court probate	190			
SCHOOLS, CONGRESSIONAL.				
Congressional townships incorporated, style and powers	509			
Process against, shall be by summons	"			
Trustees may procure seal	"			
School com'r shall appoint trustees, who shall appoint a treasurer	"			
Treasurer shall take an enumeration, and draw and disburse money	"			

punishment of, for neglect of duty	514	Sale to be recorded; terms of sale	—
shall make dividend	"	Land to forfeit on failure to pay interest	520
books of, subject to inspect'n	515	Purchaser liable to damages when lands forfeit	—
Election of district trustees, and notice thereof	"	Com'r shall give certificate of sale to purchaser on receiving first payment	—
Judges and clerks shall certify to clerk of trustees, who shall give certificate of election	"	Liability of purchaser failing to comply	—
Term of service and qualification of district trustees	"	Purchaser holding certificate shall have right of possession	—
Vacancies, how filled, and clerk how appointed	—	Com'r shall make deed	—
Trustees may call meeting of voters, at which clerk shall preside	516	If purchase money be paid before it becomes due, deed may be required forthwith	521
School house, how built	—	Deed shall vest in purchaser or assignee	—
Trustees shall keep a record of the names of the voters of the district, &c.	—	Deed shall be acknowledged	—
Qualification of voters, any five of whom may call a meeting	—	No assignment of certificate shall be recognized by com'r, unless acknowledged	—
Trustees may be removed, and vacancies how filled	—	Purchaser may pay part or all at time of purchase	—
Trustees, books &c. of, subject to inspection	517	Voters shall determine how money may be disposed of	—
District trustees shall appoint a district treasurer who shall give bond and take oath	—	Notice of meeting of voters, how given	—
Treasurer, bond of shall be filed	—	Clerk of trustees shall be inspector of votes	—
duty of,	—	Election, how conducted	—
books of, subject to inspection	—	Ballots, how made	—
Township trustees shall have power to lease school lands	—	Votes shall be recorded	—
During the existence of lease, trustees shall have and exercise the rights, &c. of landlord	518	Certificate of result of election shall be forwarded to com'r, which shall be recorded	522
Further powers of trustees	—	Com'r shall deposit money and take receipt	—
Unsold lands for the use of schools may be sold, and how	—	Com'r shall copy receipt, forward copy to clerk of trustees, who shall record the same	—
Lands may be sold on petition of a majority of the voters of the township	—	Money deposited in loan office shall be a permanent fund for, &c., & faith of the state pledged for the preservation thereof	—
There shall be no sale unless 15 voters concur	—	Superintendent of loan office shall pay over accruing interest when applied for	—
Trustees shall divide land and fix a minimum price	519	Com'r shall loan money	—
Clerk of township trustees shall certify appraisal and division of lands to com'r, who shall record the same, and proceed to sell the land	—	Citizens of township shall have preference	—
Township trustees may cancel any lease, and avoidance to be filed	—	Money loaned, how secured	—
Lands subject to an unexpired lease may be sold	—	Chain of title certified	523
Com'r shall give notice of sale	—	Borrower may have land apprais'd	—
Where sale shall be held	—	No individual shall borrow more than \$300	—
Com'r may sell at private sale	—	Certificate, &c. shall be filed	—
	83	Mortgage to be executed and filed	—
		Com'r to decide between applicants	—

Purchaser under the state, being evicted, shall be entitled to purchase money without interest	—	Donations previously made, governed by same rules	553
Liability of listers, of collectors, of school commissioners	549	Deeds to masonic lodges	—
Judgment shall be prima facie evidence that the taxes were unpaid &c. and conclusive as to truth of return, &c.	“	Corporation dissolved, may be revived within five years; powers of new trustees, same as the old	554
Appeal from judgement &c. to supreme court	“	Trustees may be elected according to the custom of any religious society, &c.	—
Money raised by this act, how disposed of	“	Trustees of, term of office	555
Appropriation to aid in building school houses	“	Election to fill vacancies &c. how held	“
Commissioner failing to make report to state treasurer, shall not affect title to land &c.	“	SEATS OF JUSTICE.	
Penalty for neglecting to make return	550	How established; five commissioners	505
Treasurer of state shall have suits brought against delinquent commissioners	“	Commissioners shall receive donations for use of county; take bond for conveyances of land; report to county board; may adjourn for want of a quorum	505-6
Penalties collected, how applied	“	Agent to be appointed by county board; vacancy in office of, how filled	506
Duty of collector to return amount of state taxes, &c. unpaid	“	County board may hold special session, relative to county seat	“
Commissioner to compare collector's return with record of former returns	“	Town already built, may be selected as the county seat	“
Amount to be paid before owner can redeem	“	Commissioner shall give to donor, a certificate of any trust of lands received as a donation, which, shall entitle him to any surplus of the sale thereof out of county treasury; compensation to commissioners \$3 00 per day	507
Duty of collector as to delinquent lists	“	Agent removing or vacating his office, shall deliver over to his successor, or county board or treasurer, all books, papers, &c.; duty of agent's successor; agent shall settle with county boards every four months, shall be removed by county board for failure to perform any duty, and suit on his bond; shall pay over kind of money received; administrator of deceased agent shall deliver over books, &c.	507-8
Treasurer of state shall make forms for school commissioners, for their lists, &c. to be recorded by commissioner	“	County commissioner, treasurer or clerk shall not be agent	509
Minors, remedy of, whose lands have been sold	551	SECRETARY OF STATE.	
Extra copies of this act to be printed; expenses of carrying this act into effect, how paid	“	Shall affix state seal to governor's official acts; take bonds to the state	555
SCHOOLS, MEETING HOUSES, AND MASONIC LODGES.		Copies authenticated by him, shall be evidence	“
How deeds shall be made to	551	Shall preserve acts of general assembly; permit inspection of his	—
Trustees to receive deeds, for congregation, religious society or church, how elected; notice of election	—		
Certificate of election to be recorded	552		
Deed and effect thereof; cemetery in towns prohibited	—		
Rules for subsequent elections	—		
Limitation of property, &c. to be held	—		
Trustees may sell or lease the corporate property; their corporate powers	—		

office, books, &c.; furnish abstracts; shall give bond; bond to be recorded	555	spected by county board and may be removed from office	559-560
Keep branding iron; brand state property; preserve state furniture; keep register of executive correspondence; copy acts for state printer; make index and notes to acts; affix state seal to pardons; perform all duties required by law	556	May loan money, being himself responsible	“
His salary	557	Shall sue for money loaned	“
His fees	“	Compensation of	“
May appoint deputy; his office hours	“	District trustees, when elected, and term of office of	“
Shall cause statement of votes for governor, lieutenant governor, and representatives in congress, to be published	248	Oath & bond of; bond to be filed and recorded	“
Fees of	294	A body corporate, & their powers and duties	“
Librarian of state library	405	Corporate style, and general powers of	561
SECRETARIES AND CLERKS.		Powers and duties of seminary trustee transferred to	“
Of general assembly, per diem allowance to	297	May purchase land, erect sem'ry, make contracts, &c.	“
SEIZURE OF BOATS &c.		May contract for sem'ry edifice, when the fund amounts to \$400, and how	“
For wages, equipments, &c.	120	Bond of contractor to build	“
See boats, seizure of	“	Board shall pay contractor, accept building &c.	“
SEMINARIES, COUNTY.		record of proceedings of, to be kept & report made to county board	562
Act relating to	558	County board shall record seminary reports	“
Sem'ry trustee, county board shall appoint, his oath & bond	“	Clerk shall make statement annually, to prosecuting attorney, who shall forward a copy to speaker of house of representatives	“
Bond of, shall be filed with clerk, and suit thereon	“	Board of trustees may loan money	“
Shall demand moneys & effects from predecessor & for failure to deliver over, suit may be by motion or in equity	559	May collect debts as seminary trustee might	“
Holder of seminary money shall pay over to	“	Majority of, shall act, seminaries shall be permanent	“
Clerks and justices shall report to county board statement of fines &c.	“	Triennial election of trustees, and their powers	“
Suit shall be brought vs. officer withholding payment from trustee	“	Former act of seminary trustees legalized	563
Notice and motion vs. officer, judgment and per cent.	“	Board of trustees may make by-laws	“
Trustee shall report to county board annually	“	Prosecuting attorney shall conduct all suits involving seminary rights	“
Books &c. of shall be inspected by county board	“	Vacancies to be filled by county board	“
		Trustees may draw for conscientious fines	“
		Circuit court shall adjudge in relation to seminary matters &c.	“

Penalty against trustee for violation of duty	563	Fees of sheriff	271
Receipt from seminary trustee shall be sufficient for fines paid	"	" of coroner	293
Statement of fund to be laid before grand jury and county board by clerk at last session in each year	137	Sheriff shall deliver copy of fee bill	293
Land for a seminary building shall be conveyed to county	157	Sheriffs and coroners shall endorse on the process their fees	"
Records relative to seminary, how kept	"	Remedy against, for failing to collect fee bills	299
SEMINARY TRUSTEE.		Sued, may plead general issue, and give act regulating fees in evidence	"
See county business; seminaries, county.		Their duties in new counties, in conducting the first county election	398-9
SEMINARY LANDS.		Sheriff liable for conditions of bail; conditions thereof	465
Returns of commissioners of, to be recorded by treasurer of state	92	Sheriff in suits for escapes may plead general issue	"
Patents for, to be recorded by treasurer of state	"	Shall keep separate rooms for the sexes in prison	466
SENATORS AND REPRESENTATIVES.		Governor shall commission sheriffs and coroners elected, &c.	561
See elections, general.		Sheriff's bond; copy to be sent to secretary's office: sheriff's oath; term of service	"
SERVANTS.		Governor shall appoint sheriff and coroner in new counties	398, 565
See apprentices; fugitives from labor; negroes and mulattoes, servants and slaves.		Governor shall fill vacancies	"
SHERIFFS AND CORONERS.		Coroner in certain cases may perform the duties of sheriff	"
May not practice law in their c'ty	84	Bond and duties	"
Powers of sheriff extended to constable in serving process	148	Sheriff may appoint deputy	566
Sheriffs, coroners, &c. shall ex officio prosecute for offences against the revenue: see county treasurer	161	Sheriff out of office may collect taxes, fee bills, &c.	566
Sheriff shall execute process of probate court	174	Sheriff in executing process may call assistance	"
Sheriff of supreme court, how appointed, duties and fees of	200, 201	Coroner, how to proceed, on being called to view dead body; jury; charge; proclamation; witnesses; verdict; in case of felonious homicide, coroner shall inform justice of the peace	566-7-8
Sup. court may make extra allowance to, for fuel &c.	206	Sheriffs and coroners making arrests, shall take offenders before j. p.	568
Sheriff conveying convict to state prison, may call aid	221	May serve process issued by j. p.	"
Sheriff prosecuted for escape may plead general issue, and give insolvent's discharge in evidence	231	Coroner's inquest; minute description of person; coroner to give notice in newspaper; and may be sued for refusal to pay over money found	568-9
Successor of, may make deed for land sold on execution by predecessor	278	SHOWS AND EXHIBITIONS.	
May take replevy recognizance, on execution	280	Tax on; see county treasurer	160
Sheriff, how proceeded against for failing to return execution	286	Towns incorporated may assess an additional tax: see ib.	"
		Exhibiting without license: crime and punishment	216
		SLANDER.	
		Charge of incest, adultery, &c.	452

SLAVES.		Shall keep and report description of prisoner	"
Encouraging escape of, crime and punishment	214	Shall deliver books, &c., to successor	574
Fugitives from labor from other states, how reclaimed	321	Visitor, how and when appointed, and his duty	"
SMALL BANK NOTES.		Prisoners shall be supplied with bibles; preaching on Sabbath admitted; instruction may be given to	"
Act to prohibit circulation of, and penalty	422	Prisoners shall be kept in separate cells during night	575
Officers shall commence suit	"	Prisoners convicted under U. S. laws may be confined in state prison	"
Copies of this act to be forwarded to counties	"	Com'r appointed to erect buildings	575
SOCIETIES, LITERARY.		Notice of proposals to erect buildings; dimensions of; when to be commenced, and completed	"
Act for the benefit of	554	Contractor how paid; com'r may alter plan, &c.	576
SPECIAL AND GENERAL ACTS.		Prisoner shall receive three dollars when discharged	"
To be printed separately	557	Compensation to commissioner	"
Number of copies; manner of binding	"	STATE.	
Number of journals	"	Constitution of,	36
Marginal notes in special acts, dispensed with	"	May have attachment vs. an absconding debtor, without oath or bond	77
How distributed	"	Shall take as heir and administrator, the property of a corporation dissolved	149
Penalty for delaying the printer	558	STATE LIBRARY.	
Record of date of the reception of the laws in several counties	"	See library, state	405
SPURIOUS MONEY.		STATE ROADS.	
Circulation of, crime and punishment	214	See roads and highways	493
STAGES.		STAY OF EXECUTION.	
Act to provide for the safety of passengers	569	See replevy.	"
Penalty on stage driver for neglect of duty	"	STEAM MILLS.	
Each stage shall be provided with lamps, and penalty for driving without lamps	570	See mills and millers	415
Penalty on driver being intoxicated	"	SUBORNATION OF PERJURY.	
Trial and judgment	"	Crime and punishment	211
Owners, how liable; may collect judgment from driver	571	SUBPCENAS.	
Copy of this act to be put up in stage office	"	See court supreme; courts circuit, and justices of the peace.	"
STALLIONS AND JACKS.		SUITS IN CHANCERY.	
Mode of keeping	"	See practice in chancery.	"
STATE PRISON.		Superintendent, his powers and duties	"
Established at Jeffersonville	572	SUITS AT LAW.	
Governor shall farm out	"	See practice at law.	"
Governor shall give notice of letting out prison	"	Shall have preference of other creditors	283
Proposals, how accepted	573		
Superintendent's corporate powers, bond and oath	"		
Superintendent shall keep a journal and report semi-annually	"		

SUITORS AND PARTIES.

Privileged from arrest 467

SUPERSEDEAS.

See court supreme 202

SUPERVISORS OF ROADS.

How and when elected: see county business 154

Duties of, (see roads and highways)

SURETIES.

Of a constable, may have him removed, or compel him to give other security: see constable 145-6

Of an executor, administrator, or guardian, may have him removed 196

For defendant's appearance in a state prosecution, may surrender their principal at any time 222

Of debtors may notify creditor to bring suit: see debtors and their securities 233

May compel principal to answer joint declaration 234

Having paid debt of principal, may have judgment on motion 235

For costs, liable as principal 299

Remedy in favor of surety for stay of execution on judgment of j. p. 375

Sureties in appeal may object to a continuance 383

Surety may have no exeat vs. principal 386

Surety may object to a stay of execution in favor of principal "

SURVEYORS, COUNTY.

Fees of 294, 578

May issue fee bills 297

Shall be appointed by co'ty boards; oath and bond, may appoint deputies: and when they are interested, court may appoint for the occasion 576-7

Chain-carriers to be sworn 577

Surveyors shall procure from United States' land office, field notes, &c. and deposit them in the recorder's office "

Corners of land, how perpetuated "

Expense of field notes to be paid out of county treasury, and recorder's transcript shall be evidence 578

Duty of county surveyor; of recorder "

Term of office, vacancies, how filled "

Associates may fill vacancies in vacation; court may make appointments in anticipation of vacancies 579

Removal from office, for what cause; petition for removal "

Clerk's and sheriff's duty; judgment for costs "

Books &c. to be delivered to successor "

T

TALESMEN.

Allowed as at common law 359, 584

TAVERN KEEPERS.

Crime and punishment, for suffering gaming 218

For failing to post tavern rates 217

TAVERNS AND GROCERIES.

Act to license and regulate 581

County board may grant license "

Certificate of character "

Requisites to entitle to tavern license "

Applicant shall give bond; suit on bond, &c. 582

License not transferable "

Tax on license, its duration, and how granted in vacation "

Penalty for retailing after expiration of license, and other violations "

Groceries how licensed "

Applicant produce certificate; give bond 582-3

Citizens may remonstrate 583

Fees of county treasurer for granting license "

Shall not sell liquors on credit, nor to minors; nor to persons intoxicated "

Tavern rates shall be posted up "

Penalty for failing to do so 217

Cir. court shall give this act in charge to grand jury 583

TAX.

On shows and exhibitions 160

On ferries 305

TEACHERS OF CONGRESSIONAL SCHOOLS.

How employed, and their qualifications 527-531

TENANTS.

Concealing declaration in ejectm't, shall forfeit two years' rent 260

Holding over, how dispossessed; 3 months notice; complaint to two justices; venire; challenge to jurors; talesmen 584

Judgment and damages; writ of restitution; appeal, on plea of title sworn to, justices shall not render judgment; bond to prosecute in c. court, by him who pleads title 584-5

In what case notice to quit need not be given; provided tenant shall have emblements and crop 585
(See also rent and distress)

TERRE TENANTS.

How summoned, to obtain execut'n of land descending to heir, &c. 284

TERRITORY NORTH WEST OF THE OHIO.

Cession of, by Virginia to U. S. 19

Act of Virginia ratifying five articles of the ordinance of congress of the 13th July, 1787 22

Ordinance of congress for the government of the territory 23

Act of congress to divide the territory into two separate gov'ts 28

Act of congress to provide for do. 29

of congress dividing Indiana territory into two separate governments 30

of congress to enable the people of Indiana territory to form a state government 32

Ordinance of the ter'y of Indiana declaring in favor of a state gov't 35

THREE PER CENT. FUND.

How distributed; agent, how appointed 586

Vacancy; clerks; allowance "

Fund how expended; expenses how paid; amount appropriated 587

Fund, com'r of, shall render acct; may be sued; make annual report to county board 587-8

TIPLING HOUSES.

How restrained in incorporated towns 592

TITLE.

Plea of, being filed before two justices on trial for possession of land judgment shall not be rendered 585

TITLE BOND.

Specific performance of, how enforced against heirs 455

TOWN PLATS.

Shall be recorded before sale, and donations noted on the record 595

Plat shall be acknowledged 596

Penalty for non-compliance with this law "

84

Uncertain plats may be amended by sufficient designations 596

TOWNS VACATED.

Individual or corporation may petition county board and give notice for vacation of lot, street, or common in town not incorporat'd 594

County board may vacate if not objected to "

Objections how tried, and effect of vacation "

Part of an incorporated town may be vacated by board of trustees "

If public square is vacated it shall vest in county board, and if a common, shall vest in trustees 595

Persons laying off additions to towns may have the same vacated "

TOWNSHIP BUSINESS.

Townships incorporated 596

Township officers, how and when elected; election how conducted; constables to deliver certificate of election to persons elected; oath of officers 597

Township officers, term of office of: constable and treasurer shall give bond "

Township trustee shall lay off township into road districts "

duty of, shall be judge's of election; may levy township tax; fill vacancies 598

Township clerk, duty of; shall record proceedings of town. trustees; compensation to clerk "

Township treasurer, duty of 599

" " trustees shall annually settle with "

Township trustees may establish cart-way and change roads; view and establish roads; shall ex officio view and make all roads "

In what counties this law to be in force "

TOWNSHIP ELECTIONS.

(See county business; elections, township and county.)

TRANSCRIPTS.

Of justice's judgments, how filed to be a lien on real estate 135-375

From cir. court, how certified up to supreme court 202

Of judgment of supreme or circuit court may be sent to other counties to bind real estate therein	316	UNWHOLESOME PROVISIONS. Crime and punishment	214
V			
TREASON. Crime and punishment	207	VACATION OF TOWNS. (See towns vacated)	594
VAGRANTS.			
TREASURER. (See auditor and treasurer; county treasurer; court probate; revenue; college fund.)		Who shall be deemed	600
TRESPASS. Malicious, to property; crime and punishment	213-226	May be committed to jail, or held to bail, & if a minor shall be bound out	"
Simple trespass	"	Over age may be hired out	"
Trespassing animals	264	Money arising from hire, how appropriated	"
TRUSTEES.			
Trustees of co. seminay, (see co. business, and seminaries county.)		Bond, and penalty of, how collected	601
Of insolvent debtor's estate, see debtors, insolvent.		Act, how enforced; presentment of grand jury	"
To receive deeds, see schools, meeting houses and masonic lodges.		VENDING CARDS AND OBSCENE BOOKS.	
TRUSTS.			
Creation of, to be in writing	312	Crime and punishment	218
Assignment of do	"	VENDING MERCHANDIZE.	
Execution to be levied on trust estate	317	Without license, crime and punishment	217
Trust estate, on death of cestui que trust, shall be assets	"	VENDING SPIRITS.	
U			
UNITED STATES.		Without license, crime and punishment	217
Constitution of	7	VENDITIONI EXPONAS.	
List of lands sold by, to be annually procured by auditor and forwarded to the several clerks	90	(See execution; justices of the peace)	
May commit their prisoners to county jails	463	VENIRE.	
Circuit and district courts may be held in court room of sup. court	464	May be issued by probate court by J. P.	174 378
UNLAWFUL ASSEMBLAGE.			
Crime and punishment	212	VENUE.	
USE AND OCCUPATION.			
Remedy for, where there is no express lease	475	Change of, before J. P. in state cases	361
USURPATION.			
Crime and punishment	215	in civil causes	369
		How changed and for what causes, in circuit court	601
		Papers, how forwarded	602
		Expenses of removal to be paid by persons applying for change	"
		Clerk's accountability for papers; judge, order to be preserved by him	602
		Cause shall not be sent to a county where either party resides	"
		Shall not be sent to another circuit unless president judge be interested	"
		Notice of application	603
		Petitioner failing in application shall pay \$5 00 to opposite party	"

How changed in criminal cases, and by what rules change is governed	603	WILLS.	
VIRGINIA.		See court probate, descents, distribution and dower.	
Cession of N. W. Territory by, to U. States	19	Power in a will to sell, is a power to convey	198
Act of, ratifying 5th article of the compact between United States & the people N. W. of the Ohio	22	To be in writing, attested by two witnesses	314
Seventh section of an act of, concerning erection of Kentucky into a state	"	Revocation of, to be in writing	"
VISITOR OF THE STATE PRISON.		How proved; wills executed out of the state, how authenticated, and their effect	"
Shall be appointed by the governor		Proved wills shall operate as conveyances; to be recorded within three years	315
VESSELS AND BOATS.		Nuncupative will, when valid, and how proved	"
How seized for debt, mariner's and boatmen's wages, repairs, &c. 120-1-2		Alteration of, to be in writing	"
W		Estates per autre vie, devisable	"
WASTE.		Subsequent birth of a child shall revoke will	"
Executor or administrator may be sued for	190	WITNESSES.	
To school lands, how sued for	520	How summoned in supreme court	205
WATER CRAFT.		How summoned in probate court	175
Going adrift, how taken up	266	Injured party competent in state prosecutions	222
WEIGHTS AND MEASURES.		Fees of, in supreme and circuit c'ts	293
Shall be procured by county boards, to be kept by clerk who shall seal all weights and measures of the proper standard	603-4	" before j. p.	"
Penalty for selling by false weights and measures	604	Shall claim fee at each term	298
Notice shall be given when county weights and measures shall be procured	"	May be summoned by j. p. throughout the county	365
WIDOW.		For disobeying sub. issued by j. p. may be fined three dollars, and be attached	377
How summoned in distribution of estate, by probate court	187	Negro, mulatto or indian, shall not be a witness against white person	452
Her dower; see descents, distribution and dower.		Privileged from arrest	467
WOODS AND PRAIRIES.		WRIT OF ELECTION.	
Firing; crime and punishment		222	
WRIT OF ELECTION.		To supply a vacancy in the office of senator or representative in general assembly	
WRIT OF ELECTION.		For clerk, recorder, or associate judge	
WRIT OF ELECTION.		249 257	

